(1)

90-1904

The Supreme Court of the United States

OCTOBER, 1990 TERM

Supreme Court, U.S.
FILED
JUN 13 1991
OFFICE OF THE CLERK

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

—v—

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, THE COMMISSION OF LA COSA NOSTRA; ANTHONY SALERNO, also known as Fat Tony; MATTHEW IANNIELLO, also known as Matty the Horse; ANTHONY PROVENZANO, also known as Tony Pro; NUNZIO PROVENZANO, also known as Nunzi Pro; ANTHONY CORALLO, also known as Tony Ducks; SALVATORE SANTORO; CHRISTOPHER FURNARI, SR., also known as Christie Tick; FRANK MANZO; CARMINE PERSICO, also known as Junior, also known as The Snake; GENNARO LANGELLA, also known as Gerry Lang; PHILIP RASTELLI, also known as Rusty; NICHOLAS MARANGELLO, also known as Nicky Glasses; JOSEPH MASSINO, also known as Joey Messina; ANTHONY FICAROTTA, also known as Figgy; EUGENE BOFFA, SR.; FRANCIS SHEERAN; MILTON ROCKMAN, also known as Maishe; JOHN TRONOLONE, also known as Peanuts; JOSEPH JOHN AIUPPA, also known as Joey O'Brien, also known as Joe Doves, also known as Joey Aiuppa; JOHN PHILLIP CERONE, also known as Jackie the Lackie,

(Continued on inside front cover)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Defendants,

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Defendant-Petitioner,

BARRY FEINSTEIN, CARROLL HAYNES, FRANK J. SCARPINA-TO, MELANIO CUEBAS, LOUIS PARTENZA, RALPH PROSSIMO, WILLIAM BROWN, JAMES BROCKWELL, PATRICIA WILLIAMS, CARMINE CHIOCCARICLIO, HOWARD FORSTER, DAN ZAMBANINI, LEROY FLEMING, WAYNE CRUZ, RUTH WILKERSON, LAWRENCE PODAIR, TODD RUBINSTEIN, EDDIE CULLEN, NAR-CISSUS BRINSON, RUBY THOMAS, ALFRED KING, ARNETHIA MELVIN, JOHN P. MORRIS, JOSEPH L. YEOMAN, JAMES E. SMITH, DANIEL J. MCGINLEY, PETER COYLE, JOSEPH SULLIVAN, JOSEPH M. LYONS, JAMES R. BROCKWELL, WILLIAM R. HILL, WILLIAM NOLAN, JAMES BRENNAN, BRIAN MCDONALD, LARRY A. THOMAS, ERNIE HARRIS, JOSEPH BROCK, SR., JOHN R. MULLER, ROBERT OETTL, JOHN SHIELDS, LEWIS RICE, ROBERT J. EWANCO, TERRY HUNTER, VERNON RHODES, RICH POTOCHNEY, JOSEPH P. SANTONE, JOHN CRISTINA, WILLIAM C. JOHNSTON, RICHARD GLASS, DOUGLAS CAMPBELL, PAUL H. KNOLLINGER, JR., WILLIAM SIMMONS, SR., HAROLD WOLCHOK, LANGSTON MCKAY, WALTER CAHILL, ROBERT OTTMAN MARIO ABREGO, JOHN BURKE, VICTOR C. OLIVADOTI, TERENCE MAJKA, JOHN AMADIO, FRANK CRAMER, ANTHONY DEBELLA, RAY HILLIARD,

Intervenors.

QUESTIONS PRESENTED

1. Did the court of appeals err when it affirmed the District Court Order which effectively grants the Government control of the IBT in perpetuity?

   a. Did the court of appeals err when it affirmed the District Court Order which declared that paragraph L.17 of the Consent Decree, which requires Government approval of changes to the IBT Constitution, is a permanent amendment to the IBT Constitution regardless of the vote of the delegates at the Convention.

   b. Did the court of appeals err when it affirmed the District Court Order making all other amendments contained in the Consent Decree permanent amendments to the IBT Constitution.

   c. Did the court of appeals err when it affirmed the injunction issued by the district court, the effect of

which is to require the delegates to the Convention to vote on the amendments contained in the Consent Decree while at the same time declaring that vote meaningless.

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U.S. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, No. 91-6130 (2nd Cir. June 7, 1991)

CONSTITUTION

U.S. Const., Amend. I:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATUTES

18 U.S.C. §1964:

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as

the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter [18 USCS §§1961 et seq.] shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

28 U.S.C. §1254(1):

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

29 U.S.C. §411:

(a) (1) Equal rights. Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of speech and assembly. Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor

organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

PARTIES TO THE PROCEEDING

Defendant-Petitioner:

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO

Plaintiff-Respondent:

United States of America

Intervenors:

Barry Feinstein, Carroll Haynes, Frank J. Scarpina-To, Melanio Cuebas, Louis Partenza, Ralph Prossimo, William Brown, James Brockwell, Patricia Williams, Carmine Chioccariclio, Howard Forster, Dan Zambanini, Leroy Fleming, Wayne Cruz, Ruth Wilkerson, Lawrence Podair, Todd Rubinstein, Eddie Cullen, Nar-Cissus Brinson, Ruby Thomas, Alfred King, Arnethia Melvin, John P. Morris, Joseph L. Yeoman, James E. Smith, Daniel J. McGinley, Peter Coyle, Joseph Sullivan, Joseph M. Lyons, James R. Brockwell, William R. Hill, William Nolan, James Brennan,

Brian McDonald, Larry A. Thomas, Ernie Harris, Joseph Brock, Sr., John R. Muller, Robert Oettl, John Shields, Lewis Rice, Robert J. Ewanco, Terry Hunter, Vernon Rhodes, Rich Potochney, Joseph P. Santone, John Cristina, William C. Johnston, Richard Glass, Douglas Campbell, Paul H. Knollinger, Jr., William Simmons, Sr., Harold Wolchok, Langston Mckay, Walter Cahill, Robert Ottman, Mario Abrego, John Burke, Victor C. Olivadoti, Terence Majaka, John Amadio, Frank Cramer, Anthony Debella, and Ray Hilliard.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

On June 7, 1991 the United States Court of Appeals for the Second Circuit heard argument on the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO ("IBT's") appeal from the district court's May 6,

1991 Opinion and Order as amended by a May 7, 1991 Order of the District Court (hereinafter the "District Court Order").

The court of appeals entered judgment affirming the District Court Order the afternoon of June 7, 1991.

The IBT submits this Petition for a Writ of Certiorari to review a decision of the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. §1254. This case is appropriate for Supreme Court review because the order of the district court affirmed by the court of appeals grants the United States of America (the "Government") permanent control of the IBT, disenfranchising the union's 1.7 million members without ever allowing the

membership, through its democratically elected delegates to vote on the Government's control.

STATEMENT OF THE CASE

The IBT is the largest trade union in the United States. There are 1.7 million voting members in the IBT, a number larger than the voting population of 26 states. The IBT has 660 locals. United States v. International Broth. of Teamsters, 723 F.Supp. 203, 208 (S.D.N.Y. 1989).

The Government commenced this action against the IBT, its General Executive Board (the "GEB"), the Commission of La Cosa Nostra and others under the provisions

of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 USC §1964. On March 14, 1989 prior to trial, the Government and the GEB, individually and on behalf of the IBT, entered into a consent decree which was entered as an order of the district court that same day (the "Consent Decree").[1]

The Consent Decree is comprehensive. It provides for three administrative officers: an elections officer to implement election rules and to supervise the 1991 IBT elections; an investigations officer to investigate wrongdoing and to

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[1] The Consent Decree is reproduced at A. 55-107.

file charges against union officials or organizations when appropriate; and an independent administrator with powers co-terminous with those of the General President and the GEB. It provides for a three step election procedure culminating in a direct rank-and-file election of officers and provides for the appointment of an Independent Review Board after certification of the election in 1992. Following the provisions pertaining to each of these subjects appears the phrase "the delegates shall be presented with the aforesaid amendments for vote." (A. 83, 97.)

1. The Government's Motion.

On February 22, 1991, the Government filed a Notice of Motion together with a

supporting Declaration (Declaration of Edward T. Ferguson, III, hereinafter cited "Ferguson Dec.") asking the court to declare "that the Consent Decree's three-stage procedure for election of IBT International Union Officers cannot be changed except in accordance with the Consent Decree's future practices provision, and [to] enjoin[ ] any attempt to change that electoral procedure by any other means." (Ferguson Dec., ¶2, p.2.)

In support of its motion, the Government alleged there were "plans at the highest echelon of the IBT to amend the IBT Constitution to convert the June Nominating Convention into an Election Convention and thereby scuttle the December rank-and-file

vote." (Ferguson Dec., ¶19, p.15.) The IBT opposed the motion, in part on the ground that the Government had not alleged sufficient facts to warrant the relief requested. (Memorandum of IBT in Opposition to Plaintiff's Motion for Declaratory and Injunctive Relief; Supplemental Memorandum of IBT in Opposition to Plaintiff's Motion for Declaratory and Injunctive Relief.) Additionally, the IBT submitted the statement of IBT General President William McCarthy indicating his intent to "support the adoption of the Consent Order at the Convention". International Teamster, p.1. This statement was offered to indicate not only the General President's support for

the Consent Decree, but also to evince that the IBT was unaware of any expressed plan among GEB members to scuttle the Consent Decree.

2. The March 20, 1991 Hearing.

The district court held a hearing on the Government's motion on March 20, 1991.[2] At that hearing, the court stated that it was treating the Government's motion, insofar as it sought declaratory relief, as an application for interpretation of certain provisions of the Consent

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2 The transcript of the March 20, 1991 hearing is reproduced at A. 128-199.

Decree, pursuant to Paragraph K.16 of the Consent Decree. (A. 134.)

The Government stated that, pursuant to Paragraphs D.9.(b) and F.12.D of the Consent Decree, the Convention delegates will have the right to vote their approval or disapproval of the Consent Decree's amendments to the IBT Constitution. (A. 179.) The Government further stated that, should the delegates vote to disapprove those amendments, then Government representatives would be present at the Convention to consider, pursuant to the Consent Decree's "Future Practices" provision (A. 101-102.), any alternative electoral procedure proposed. (A. 179.) The Government argued that the "Future

Practices" provision requires the IBT to give the Government prior notice of any constitutional changes contemplated either by the General Executive Board, between conventions, or by the delegates at the Convention. (A. 179.) The Government also conceded that the Convention delegates should be able to assemble, associate, vote, discuss and debate, however robustly, any matters properly before the Convention under the IBT's own rules for conventions; that they should be free to vote on the Consent Decree; and that they will be free to exercise to their fullest any rights they have under law. (A. 181.)

The foregoing notwithstanding, the District Court stated its view that it

could avoid potential difficulties at the Convention by dealing with the problem "right here and now, which gives everybody not only clarification, but gives them an opportunity to take the elevator up from here to the 17th floor . . . rather than wait possibly for a time when I may be constrained to grant a stay." (A. 185-187.)

3. The May 6, 1991 Hearing and the District Court Order.

On May 6, 1991, the district court convened a hearing for the purpose of informing the parties that it had issued an

opinion on the Government's motion.[3] From the bench the court stated:

> I have determined that as a result of decisions in the past two years, it has been settled that the IBT had the power to bind the entire union to the [C]onsent [D]ecree's changes in the IBT Constitution without a vote of the delegates to a convention. Therefore, the vote of the delegates on the [C]onsent [D]ecree to be taken at the 1991 convention will now have no legal effect.

(A. 111-112.) The court then issued a written Opinion & Order to that effect.[4] (A. 7-54.)

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3 The transcript of the May 6, 1991 hearing is reproduced at A. 108-127.

4 The May 6, 1991 Order is reproduced at A. 7-54.

Later during that same hearing, the Government asked the court to "clarify" its ruling to provide that "paragraph 17 of the [Consent] [D]ecree, like the entire [C]onsent [D]ecree, is a permanent amendment to the IBT Constitution" (A. 123.) and that "nothing in this opinion shall be construed to alter the provisions of the [C]onsent [D]ecree that requires the [C]onsent [D]ecree amendments to be put to the delegates for a vote." (A. 126.)

On May 7, 1991, the court entered a further Order amending its May 6, 1991 Opinion and Order in a manner consistent

with the Government's suggestions.[5] (A. 5-6.)

4. The Appeal to the Court of Appeals for the Second Circuit.

On May 14, 1991, the IBT filed a Notice of Appeal from the District Court Order with the clerk of the district court. The IBT then moved for an expedited determination of its appeal which the Second Circuit granted. The court of appeals heard argument on the IBT appeal on June 7, 1991 and entered judgment affirming

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[5] The May 7, 1991 Order is reproduced at A. 5-6.

the District Court Order later that afternoon.[6]

The IBT filed a Motion to recall the mandate and to stay the District Court Order on June 12, 1991.

ARGUMENT

This case raises the issue of whether the Government may take permanent control of a labor union without ever allowing the membership, through its democratically

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6 The Order of the Court of Appeals for the Second Circuit is reproduced at A. 1-4.

elected delegates, to express its views, by vote, on the Government's control.

The District Court Order, affirmed below, effectively rules that the GEB granted control of the union to the government in perpetuity when the GEB entered into the Consent Decree. This follows because in the May 7 amendment the district court ruled that "Paragraph L.17, like the entire Consent Decree, is a permanent amendment to the IBT Constitution." (A. 5.)

Paragraph L.17 provides:

> The parties intend the provisions set forth herein to govern future IBT practices in those areas. To the extent the IBT wishes to make any changes, constitutional or otherwise, in those provisions, the IBT shall give

> prior written notice to the . . . [Government], through the undersigned. If the . . . [Government] then objects to the proposed changes as inconsistent with the terms and objectives of this . . . [Consent Decree], the change shall not occur; provided, however, that the IBT shall then have the right to seek a determination from the Court, or after the entry of judgment dismissing this action, from this Court or any other federal court of competent jurisdiction as to whether the proposed change is consistent with the terms and objectives set forth herein. (A. 101-102.)

This ruling regarding the effect of Paragraph L.17 of the Consent Decree grants the Government permanent control of the IBT.

As indicated above, on May 6, the district court ruled in its Opinion and Order "that the electoral and disciplinary provisions of the Consent Decree are a part of the IBT Constitution . . . regardless of

the vote of the delegates . . . unless . . . changed in accordance with ¶L.17 . . ." (A. 53) and that "the IBT is put on notice that it shall not take action to vote against the very Consent Decree which it signed." (A. 52.) Together these orders effectively disenfranchise the rank-and-file of the IBT and place the Government in control of the union. This conclusion results notwithstanding strong Congressional support for preserving a "maximum amount of independence and self-government [for international unions]", Wirtz v. Local 153, GBBA, 389 U.S. 463, 473 (1968), and the express provisions of the Consent Decree both requiring that the amendments to the IBT

Constitution contained therein be "presented to the delegates for a vote" and declaring that "nothing herein shall be deemed or interpreted or applied to abridge the Landrum-Griffin free speech right of any IBT officer, delegate, or member, including the parties hereto." (A. 83.)

These provisions of the Consent Decree are consistent with the Congressional policy favoring maximum independence and self-government by labor unions. The freedom allowed unions to govern their affairs has been repeatedly recognized by the courts. Wirtz v. Local 153, GBBA, 389 U.S. 463, 473 (1968); Wirtz v. Hotel Employees Union, 391 U.S. 492, 497-498 (1968); Dolan v. Transport Workers Union,

746 F.2d 733, 739-740 (11th Cir. 1984). While the parties have entered into a Consent Decree, every effort should be made to interpret its provisions in accordance with this policy, whenever possible. Recognition of this policy is particularly appropriate in this case because the Government seeks to take virtual control over the governance of the IBT "in perpetuity." (Brief for Plaintiff-Appellee United States of America, p.7, ¶2, filed in the court below). The District Court Order, affirmed below, allows this result even though

- the express provisions of the Consent Decree require a vote (A. 63-64, 78-83, and 97);

- the delegates to the Convention were elected pursuant to procedures implemented and supervised by the Elections Officer (A. 66-97);

- the Consent Decree explicitly recognizes the membership's Landrum-Griffin free speech rights (A. 63-64; see also, U.S. Const., Amend. I, 29 U.S.C. §411(a)(1) and (2));

- Article III, Section 9(b) of the IBT Constitution requires that "Amendments to the Constitution . . . shall be adopted by a majority vote of the delegates . . ." (IBT Constitution, p.20); and

- paragraph 9(b) of the Consent Decree preserves the Government's right to seek "any appropriate action" if the IBT has not formally amended its Constitution to conform to the terms of the Consent Decree by the completion of the 1991 Convention (A. 63-64).

For the Government to be placed in this position of control without a vote of the

rank-and-file, through its delegates, turns the rational underlying the Government's case upside down. In its Complaint the Government alleged that the GEB was subject to the influence of organized crime and that the rights of the rank-and-file were restricted as a consequence thereof. By eviscerating the delegates' vote, the district court effectively ruled that the GEB had the power to extend broad rights "in perpetuity" to the Government without rank-and-file input. In other words, the GEB, which was the subject of the Government's concern, is permitted to restrict the rights of the rank-and-file, the very individuals whose rights the Government was seeking to expand.

Indeed, the expansion of the rights of union rank-and-file was a concern of Congress. It indicated in debates

> "a need to protect the rights of rank-and-file members to participate fully in the operation of their union through processes of democratic self-government . . . to keep the union leadership responsive to the membership. This theme is made explicit in the reports of the Labor Committees of both Houses of Congress. It is reflected in the discreet provisions . . . of the 'Bill of Rights' for union members."

Wirtz v. Hotel Employees Union, 391 U.S. 492, 497-498 (1968).

The District Court Order not only disenfranchises the rank-and-file of the IBT, but compels it to enter a permanent partnership with the Government. This follows because it requires "the Consent

Decree's amendments to be put to the Convention delegates for a vote" (A. 6), while simultaneously enjoining the IBT from taking any "action to vote against" the Consent Decree. (A. 52.) The cumulative effect of the District Court Order is (a) that the Consent Decree amendments be put to the delegates for vote, (b) that the IBT cannot vote against the Consent Decree amendments, and (c) that the delegates must vote in favor of the Consent Decree amendments.

CONCLUSION

If this Court does not grant certiorari and determine the issues raised herein before the IBT International Convention on June 24, 1991, not only will the Government have been permitted to usurp control of the IBT without input from the rank-and-file, but also it may forever lose its right to be heard on these issues. For if the delegates vote for the Consent Decree amendments at the Convention, as required by the District Court Order, the favorable vote will enable the Government to claim later that the issues are moot.

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The Supreme Court of the United States

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UNITED STATES OF AMERICA,

Plaintiff-Respondent,

—v—

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, THE COMMISSION OF LA COSA NOSTRA; ANTHONY SALERNO, also known as Fat Tony; MATTHEW IANNIELLO, also known as Matty the Horse; ANTHONY PROVENZANO, also known as Tony Pro; NUNZIO PROVENZANO, also known as Nunzi Pro; ANTHONY CORALLO, also known as Tony Ducks; SALVATORE SANTORO; CHRISTOPHER FURNARI, SR., also known as Christie Tick; FRANK MANZO; CARMINE PERSICO, also known as Junior, also known as The Snake; GENNARO LANGELLA, also known as Gerry Lang; PHILIP RASTELLI, also known as Rusty; NICHOLAS MARANGELLO, also known as Nicky Glasses; JOSEPH MASSINO, also known as Joey Messina; ANTHONY FICAROTTA, also known as Figgy; EUGENE BOFFA, SR.; FRANCIS SHEERAN; MILTON ROCKMAN, also known as Maishe; JOHN TRONOLONE, also known as Peanuts; JOSEPH JOHN AIUPPA, also known as Joey O'Brien, also known as Joe Doves, also known as Joey Aiuppa; JOHN PHILLIP CERONE, also known as Jackie the Lackie,

(Continued on inside front cover)

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APPENDIX

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Defendants,

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Defendant-Petitioner,

BARRY FEINSTEIN, CARROLL HAYNES, FRANK J. SCARPINA-TO, MELANIO CUEBAS, LOUIS PARTENZA, RALPH PROSSIMO, WILLIAM BROWN, JAMES BROCKWELL, PATRICIA WILLIAMS, CARMINE CHIOCCARICLIO, HOWARD FORSTER, DAN ZAMBANINI, LEROY FLEMING, WAYNE CRUZ, RUTH WILKERSON, LAWRENCE PODAIR, TODD RUBINSTEIN, EDDIE CULLEN, NAR-CISSUS BRINSON, RUBY THOMAS, ALFRED KING, ARNETHIA MELVIN, JOHN P. MORRIS, JOSEPH L. YEOMAN, JAMES E. SMITH, DANIEL J. MCGINLEY, PETER COYLE, JOSEPH SULLIVAN, JOSEPH M. LYONS, JAMES R. BROCKWELL, WILLIAM R. HILL, WILLIAM NOLAN, JAMES BRENNAN, BRIAN MCDONALD, LARRY A. THOMAS, ERNIE HARRIS, JOSEPH BROCK, SR., JOHN R. MULLER, ROBERT OETTL, JOHN SHIELDS, LEWIS RICE, ROBERT J. EWANCO, TERRY HUNTER, VERNON RHODES, RICH POTOCHNEY, JOSEPH P. SANTONE, JOHN CRISTINA, WILLIAM C. JOHNSTON, RICHARD GLASS, DOUGLAS CAMPBELL, PAUL H. KNOLLINGER, JR., WILLIAM SIMMONS, SR., HAROLD WOLCHOK, LANGSTON MCKAY, WALTER CAHILL, ROBERT OTTMAN MARIO ABREGO, JOHN BURKE, VICTOR C. OLIVADOTI, TERENCE MAJKA, JOHN AMADIO, FRANK CRAMER, ANTHONY DEBELLA, RAY HILLIARD,

Intervenors.

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SDNY
N89-cv-499
88cv4486
EDELSTEIN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the seventh day of June, one thousand nine hundred and ninety-one.

91-6112

United States of America,
Plaintiff-Appellee,

v.

International Brotherhood of Teamster, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO,
Defendant-Appellant.

91-6130

United States of America,
Plaintiff-Appellee,

v.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO,
Defendant-Appellant.

91-6136

United States of America,
Plaintiff-Appellee,

v.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO,
Defendant-Appellant,

Barry Feinstein, et al.,
Applicant-Intervenors-Appellants.

O R D E R

Docket Nos. 91-6112; 91-6130; 91-6136

The appeal in 91-6112 is dismissed since the order of April 29, 1991, is in the nature of a calendaring order.

The order of May 6, 1991, as amended by the order of May 7, 1991, on appeal in 91-6130 is affirmed. See United States v. IBT, slip op. 3601, 3616 (2d Cir. April 12, 1991); United States v. IBT, 905 F.2d 610 (2d Cir. 1990) (Friedman & Hughes). See also Berger v. Heckler, 771 F.2d 1556, 1567-68 (2d Cir. 1985) (consent decree is court order, to be enforced as such).

In respect to the appeal in 91-6136, from the denial of a motion to

intervene, we treat the appeal as a petition to intervene on appeal and grant it.

Mandate to issue forthwith.

JAMES L. OAKES, Chief Judge

GEORGE C. PRATT, Circuit Judge

FRANK X. ALTIMARI, Circuit Judge

N.B. THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND SHOULD NOT BE CITED OR OTHERWISE RELIED UPON IN UNRELATED CASES BEFORE THIS OR ANY OTHER COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

Plaintiff,

-v- 88 CIV. 4486 (DNE)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, et al.,

Defendants.

----------X

ORDER

EDELSTEIN, District Judge:

IT IS HEREBY ORDERED that the following sentences shall be added the May 6, 1991 Opinion & Order in the above-captioned case:

The sentence "Paragraph L.17, like the entire Consent Decree, is a permanent amendment to the IBT constitution." shall follow the last sentence of the first full paragraph on page 22; and

The sentence "Nothing in this opinion shall be construed to alter the provisions of the Consent Decree that require the Consent Decree's amendments to be put to the convention delegates for a vote." shall be added to follow the last sentence of the second full paragraph on page 23.

So Ordered.

Dated: May 7, 1991
New York, New York

_____
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

UNITED STATES OF AMERICA,

Plaintiff,

-v- 88 CIV. 4486 (DNE)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, et al.,

Defendants.
----------X

OPINION & ORDER

APPEARANCES: OTTO G. OBERMAIER, United States Attorney for the Southern District of New York, (Edward T. Ferguson, III, Peter C. Sprung, Assistant United States Attorneys, of counsel) for the United States of America;

GOULSTON & STORRS, Boston Massachusetts, (Rudolph G. Pierce, James F. O'Brien, Dennis King, of counsel) for the International Brotherhood of Teamsters.

EDELSTEIN, District Judge:

This opinion emanates from the voluntary settlement in the action commenced by plaintiff United States of America (the "Government") against the defendants International Brotherhood of Teamsters (the "IBT") and the IBT's General Executive Board (the "GEB") embodied in the voluntary consent order entered March 14, 1989 (the "Consent Decree"). The provisions in the Consent Decree provided for three Court-appointed officials, the Independent Administrator to oversee the remedial provisions, the Investigations Officer to bring charges against corrupt IBT members, and the Election Officer to oversee the electoral process leading up to and including the 1991 election for International Officers (collectively, the

"Court Officers"). The goal of the Consent Decree is to rid one IBT of the hideous influence of organized crime through the election and prosecution provisions.

On March 19, 1991, the Government moved this Court for (i) a declaration that the function of the International Union nominating convention as set out in ¶F.12.(D) of the Consent Decree may not be altered except by compliance with ¶L.17 of the Consent Decree; and (ii) an order enjoining the IBT, as the representative of the GEB, and its employees, members, agents, attorneys and affiliates (including local unions, joint councils, and area conferences [hereinafter the "subordinate entities"]) from taking any action to alter the function of the International Union nominating convention as set out in ¶F.12.(D) of the Consent Decree. This

Court held oral argument on this motion on March 20, 1991, after which the parties submitted proposed findings of fact and conclusions of law.

This dispute arises because the Government has reasons to believe that constituencies of the IBT are planning for the IBT convention delegates to "vote out" the Consent Decree, more particularly, the provisions for direct rank and file elections of International Officers. The Government contends that with the Consent Decree's electoral provisions voted out, the IBT would attempt to revert to its prior election process. Thus, the convention delegates themselves elect the General President at the convention, eliminating the rank and file vote, and thereby disenfranchising the membership. The Government seeks to prevent this

situation. The Government asks this Court to rule on the legal status of provisions of the Consent Decree.

The validity of the Consent Decree's electoral changes to the IBT constitution are no longer at issue. Accordingly, the relevant ruling for this Court to make is a substantive determination of the legal effect of the Consent Decree in the event that the convention delegates vote against its constitutional changes. In the alternative, this Court will also rule on the Government's motion de novo.

I. Background

The Consent Decree settled the litigation between the Government and the IBT (the "underlying litigation"). As has been discussed more fully in opinions of this Court and the Court of Appeals this

RICO litigation involved allegations of a massive racketeering enterprise and conspiracy to participate in that enterprise. See, e.g. United States v. International Brotherhood of Teamsters, et al., Slip Opinion, (2d Cir. April 12, 1991) (Election Rules); United States v. International Brotherhood of Teamsters, et al., 907 F.2d 277 (2d Cir. 1990) (All Writs Act injunction); United States v. International Brotherhood of Teamsters, et al., 905 F.2d 610 (2d Cir. 1990) (Friedman & Hughes); United States v. International Brotherhood of Teamsters, et al., 708 F. Supp. 1388 (S.D.N.Y. 1989) (Opinion denying motion to dismiss complaint in underlying litigation).

The Consent Decree amended the electoral and disciplinary provisions of the IBT constitution. By ¶9(a), the entire

Consent Decree immediately became part of the IBT constitution:

> The IBT Constitution shall be deemed and hereby is amended to incorporate and conform with all of the terms set forth in the order.

Paragraph 9(b) further stated that the provisions of the Consent Decree would formally be voted a part of the IBT constitution by the delegates to the 1991 IBT Convention.

> By no later than the conclusion of the IBT convention to be held in 1991, the IBT shall have formally amended the IBT constitution to incorporate and conform with all of the terms set forth in this order by presenting said terms to the delegates for a vote. If the IBT has not formally so amended the IBT constitution by that date, the Government retains the right to seek any appropriate action, including enforcement of this order, contempt, or reopening this litigation.

Among its substantive provisions, the Consent Decree amended the IBT constitution's then existing procedure for

electing the General President and International Officers. Under the prior system, officers of IBT subordinate entities had been ex officio delegates to the IBT convention. At such a convention, those delegates would directly elect the General President and International Officers. The Consent Decree created a three-step election process culminating in direct rank and file secret ballot elections. First, the local unions have been holding local secret ballot delegate elections during the fall of 1990 and the spring of 1991. Second, these elected delegates will attend the 1991 IBT national convention to be held June 24-28 in Epcot Center, Florida (the "convention"). There, the delegates will vote (i) to approve the Consent Decree's changes to the IBT constitution as provided by ¶9 and

¶F.12.(D) of the Consent Decree, and (ii) to nominate candidates for IBT International Officers. In the fall of 1991, the IBT will hold a union-wide, direct, secret ballot election of the rank and file for the International Officers.

Since the Consent Decree was executed on March 14, 1989, its scope, terms, and meaning have been repeatedly challenged. With respect to the disciplinary provisions of the Consent Decree, the Court of Appeals and this Court have now determined that the Investigations Officer and Independent Administrator are stand-ins for the General President and GEB, who properly delegated their disciplinary power to those Court Officers pursuant to Article XXVI, section 2 of the IBT Constitution. United States v. International Brotherhood of Teamsters, supra, Slip Opinion, (2d Cir., April 12,

1991) at 3617; United States v. International Brotherhood of Teamsters, supra, 905 F.2d at 622; December 27, 1990 Opinion & Order, 754 F. Supp. 333, 337 (S.D.N.Y. 1990); September 18, 1990 Opinion & Order, 745 F. Supp. 189, 191-92 (S.D.N.Y. 1990); August 27, 1990 Opinion & Order, 745 F. Supp. 908, 911 (S.D.N.Y. 1990); March 13, 1990 Opinion & Order, 743 F. Supp. 155, 159-60, aff'd 905 F.2d 610, 622; January 17, 1990 Opinion & Order, 728 F. Supp. 1032, 1048-57, aff'd 907 F.2d 277 (2d Cir. 1990); November 2, 1989 Memorandum & Order, 725 F.2d 162, 169 (S.D.N.Y. 1989); Joint Council 73 et al. v. Carberry et al., 741 F. Supp. 491, 493 (S.D.N.Y. 1990); Local 27 v. Carberry et al., July 20, 1990 at 3-4 (S.D.N.Y. 1990).

The validity of the Consent Decree's electoral changes are also settled. This

Court and the Court of Appeals in turn have held that the electoral changes were properly within the parties of the General President and GEB and binding upon the entire IBT. United States v. International Brotherhood of Teamsters, supra. (April 12, 1991). The scope of the Election Officer's duties, October 18, 1989 Memorandum & Order, 723 F. Supp. 203, stay and certification denied 728 F. Supp. 920 (S.D.N.Y. 1989); appeal dismissed, No. 89-6252 (2d Cir. Dec 13, 1989), cert. denied, 110 S. Ct. 2618 (1990), aff'd Slip Opinion (2d Cir. April 12, 1991), and approved a comprehensive set of rules applicable to all facets of the IBT that govern this historic election. July 10, 1990 Opinion & Order, 742 F. Supp. 94 (S.D.N.Y. 1990), aff'd Slip Opinion (2d Cir. April 12, 1991).

The Consent Decree's constitutional changes are fully effective and binding on the entire 1.7 million member IBT. Challenges by subordinate entities and individual IBT members to the validity of the disciplinary provisions and electoral provisions have been repeatedly rejected by the Court of Appeals and this Court. See, e.g., United States v. International Brotherhood of Teamsters, supra, 905 F.2d 610, aff'g March 13, 1990 Opinion & Order, supra, (challenges to disciplinary powers of Court Officers rejected); United States v. International Brotherhood of Teamsters, supra, Slip Opinion, April 12, 1991, aff'g July 10, 1990 Opinion & Order (challenges of electoral process to subordinate entities rejected).

Paragraph L.17 of the Consent Decree, the future practices provision, sets out

the obligation of the parties not to alter the understanding of both parties as to the terms of the settlement Paragraph L.17 states:

> The parties intend the provisions set forth herein to govern future IBT practices in those areas. To the extent the IBT wishes to make any changes, constitutional or otherwise, in those provisions, the IBT shall give prior written notice to the plaintiff, through the undersigned. If the plaintiff then objects to the proposed changes as inconsistent with the terms and objectives of this order, the change shall not occur; provided, however, that the IBT shall then have the right to seek a determination from the Court, of after the entry of judgment dismissing this action, from this Court or any other federal court of competent jurisdiction as to whether the proposed change is consistent with the terms and objectives set forth herein.

Paragraph L.17 has been interpreted as requiring approval of any changes to the IBT constitution that would alter the background understanding of the parties as to disciplinary or electoral matters:

> [T]he IBT [must] refrain from any unilateral changes, 'constitutional or otherwise,' in the broad areas covered by the Consent Decree. Paragraph [L.]17 was obviously intended to protect the background understanding of both parties as to what existing rules, regulations, and constitutional provisions would govern the IBT.

United States v. International Brotherhood of Teamsters, supra, 905 F.2d at 620 (quoting March 13 Opinion & Order, supra, 743 F. Supp. at 163).

II. Discussion

In the instant matter, this Court must consider (i) ¶K.16, the application provision of the Consent Decree, (ii) two motions to intervene, (iii) the substantive legal status of the delegates vote at the IBT convention, and (iv) the Government's motion.

A. The Application Provision of the Consent Decree

As a threshold matter, the IBT argues that this Court should not entertain the Government's motion or make any ruling regarding the upcoming convention. The Government argues that the IBT consented to this Court ruling on the instant motion by way of K.16. I agree.

Paragraph K.16 authorized this Court to "entertain any future applications" by the parties, which includes interpretations and rulings relating to the Consent Decree. Such rulings have been sought and issued numerous times over the past two years. See October 18, 1989 Memorandum & Order, supra, (interpretating F.12 to determine scope of duties of Election Officer); November 2, 1989 Memorandum & Order, supra, (interpreting ¶D.5 to determine statute of

limitations for bringing disciplinary charges); November 16, 1989 Order, (interpreting ¶F.12.(E) to determine the scope of the Independent Administrator's right to publish a monthly communication in The International Teamster); December 12, 1989 Memorandum & Order, 726 F. Supp. 943 (S.D.N.Y. 1989), (interpreting ¶E.10 to determine when collateral lawsuits interfere with work of Court Officers); January 17, 1990 Opinion & Order, supra, (interpreting scope of applications to Court under ¶K.16; status of ¶F.12 changes); February 27, 1990 Memorandum & Order, 735 F. Supp. 502 (S.D.N.Y. 1990), (Interpreting ¶F.12.(E) to permit publication of names of those charged in disciplinary proceedings in The International Teamster); March 13, 1990 Opinion & Order, supra, determining

Independent Administrator's power to interpret disciplinary portions of IBT constitution by ¶F.12.(A); inability of IBT to interpret disciplinary provisions of IBT constitution without complying with ¶L.17); April 9, 1990 Memorandum & Order, 735 F. Supp. 319 (S.D.N.Y. 1990), (interpreting "reasonable cause" requirement for sworn statements set out at ¶F.12.(C)(c) and (d)); July 10, 1990 Opinion & Order, supra, (interpreting ¶F.12.(D) scope of Election Officer duties; ¶E.10 injunction); November 28, 1990 Memorandum & Order, 133 F.R.D. 99 (S.D.N.Y. 1990), (interpreting cause requirement to take statements of IBT agents at ¶F.12.(C)(i)(d)).

The scope of ¶K.16 is broad enough to warrant the court to consider prospective matters that may threaten the letter, spirit and intent of this Decree. The

IBT's assertion that this motion is speculative is merely a play on words. Further, the IBT has specifically refused to deny the Government's allegations. On March 20, 1991, I directly asked IBT General Counsel Grady whether the IBT disputed the Government's allegations. On behalf of the IBT, General Counsel Grady did not deny those allegations. (Transcript, March 20, 1991 at 24-25).

This matter would never even have to be addressed had the IBT been candid and forthright and assured me that no such plan was in place. The fact that they did not leads to the reasonable inference that they are up to no good.

Accordingly, the IBT's challenges are meritless.

B. Motions to Intervene

Two groups of IBT members, (i) the Durham-Mathis Unity Team, (a slate of candidates running for international office), and (ii) a group of elected delegates to the IBT convention, moved this Court to intervene in the instant motion pursuant to Fed. R. Civ. Pro. 24(a). These applications have no merit. Neither group has demonstrated that its interest in the instant matter is not "adequately represented by existing parties," in this instance the IBT. See Fed. R. Civ. Pro. 24(a). It has been established that the election of international officers pursuant to the Consent Decree is a matter solely in the purview of the IBT. United States v. International Brotherhood of Teamsters, supra, April 12, 1991 Slip Opinion at 3620. Accordingly, since the instant

motion relates exclusively to the Consent Decree, specifically the validity of its provisions, the movants have not met the requirements of Rule 24.

As a result, intervention in this matter is hereby denied in all respects.

C. The Status of the Consent Decree

The Government seeks to determine the obligation of the IBT should the convention delegates vote against the Consent Decree's provisions. This issue needs clarification because ¶9(a), which stated that the IBT constitution was immediately amended to include all the terms of the Consent Decree, seems in conflict with ¶12(D) and ¶9(b), which provide that the changes would be brought to a vote at the convention. The language, purpose, and history of the Consent reveal that there is no

inconsistency. The parties originally included the convention vote because of their uncertainty whether the IBT could agree to constitutional changes that would bind the subordinate entities by the Consent Decree. The vote was designed to ensure that the subordinate entities would be bound by their ratification. In the course of litigation over the past two years it has been conclusively determined that the IBT had the power to bind the subordinate entities, and has bound the subordinate entities, thus eliminating any possible uncertainty.

It is clear that the Consent Decree is fully part of the IBT constitution and the law of that union no matter what the convention delegates' vote. The (i) specific language of the Consent Decree and the intent of the parties expressed to me

when the Consent Decree was signed, and (ii) legal decisions over the past two years make this self-evident.

First, the specific language of ¶¶9(b) and F.12.(D) (the "approval provisions") of the Consent Decree, coupled with the parties explicit statements clearly reveals the reasons for the inclusion of those provisions. At a conference held on March 14, 1989, after briefly considering the draft Consent Decree submitted to the Court by the parties, this Court pointed out a number of ambiguities in that document. (Transcript, March 14, 1989, at 1-18). Most relevant was this Court's observation that the Consent Decree contained an inconsistency: ¶9 stated that the IBT constitution was immediately amended in accordance with all the terms of the Consent Decree, but ¶12.(d) provided that

the electoral changes would be submitted to the IBT convention delegates for a vote at the 1991 convention. (Tr. at 3).

In response to the Court's request for clarification, counsel for the Government on behalf of the parties stated why they had included those inconsistent terms:

> The document makes clear that the constitution of the IBT is deemed amended immediately. In the Government's view, that is a permanent amendment and not subject to change, absent [Governmental approval pursuant to ¶L.17], without first coming to the Government for change...
>
> Certain locals officials or local unions may in the future raise legal challenges about the amendment of an international constitution in a manner that was by court order rather than pursuant to the constitution which calls for ratification at a convention. We believe, the Government believes, your Honor, that there is no question that the amendments can be ordered by this Court pursuant to a consent decree, and that they are automatically in effect. But if down the road, there is a challenge by a local official or local union,

> ratification at the convention would eliminate any legal issue at all.

(Transcript, March 14, 1989 at 15-16). The Court then instructed the parties to insert "clarifying language" on this subject. Id. at 16. The parties returned later that day, having rewritten ¶9 to the current ¶¶9(a) and (b).

As was clearly stated to the Court, the Government insisted that the convention delegates vote in the Consent Decree's electoral changes, first at ¶F.12.(D), then at ¶9(b), in order to eliminate any potential doubt as to the Consent Decree's binding effect on the subordinate entities. The Government in no way intended to give the convention delegates "veto" power over the entire Consent Decree or any portion of it. Nor does the language of the Consent Decree, its purpose

or history provide for such power. When the Consent Decree was signed on March 14, 1989, there was no direct legal ruling that established the IBT's ability to amend its constitution by the Consent Decree. It is undoubtedly true that had such precedent been in place on March 14, 1989, the approval provisions never would have been part of the Consent Decree.

Further, there is no doubt that the IBT agreed to the inclusion of the approval provisions for the sole purpose of ameliorating a potential legal challenge to its power to enter into the Consent Decree's constitutional changes. The General Counsel for the IBT, Mr. Grady, publicly stated just after the signing of the Consent Decree in testimony before the United States Senate, that the IBT agreed for the Consent Decree's changes to be

submitted to the convention delegates solely at the insistence of the Government:

> SENATOR NUNN: How can, the Convention in 1991, or whenever it is going to occur, how can they--the Convention amend this if it is precluded by this provision [¶L.17]?
>
> MR. GRADY: I recognize where the Senator is coming from and there does appear to be some inconsistency here.
>
> * * *
>
> However, it was the Government's position that we concur to that, that this was a necessary element of a settlement. That is, for the delegates to, in effect, bring these provisions into their own constitution, and that is why they are there.

Federal Government's Use of Trusteeships under the RICO Statute: Hearings Before the Permanent Subcomm. on Investigations of the Senate Comm. on Governmental Affairs, 100th Cong., 1st Sess. at 31. (1989).

Second, interpretations by this Court and subsequently the Court of Appeals have

resolved challenges to the validity of the Consent Decree's constitutional changes. The amount of litigation that has ensued boggles the imagination. Repeated litigation has resulted in a line of decisions that conclusively determined the IBT's power to amend the IBT constitution by entering into the Consent Decree, and bind the entire union to those changes. United States v. International Brotherhood of Teamsters, supra, 905 F.2d 610, aff'g March 13, 1990 Opinion & Order, supra; United States v. International Brotherhood of Teamsters, supra, Slip Opinion, April 12, 1991, aff'g July 10, 1990 Opinion & Order; United States v. International Brotherhood of Teamsters, supra, 907 F.2d 277, aff'g January 17, 1990 Opinion & Order, 728 F. Supp. 1032. See also Joint Council 73 v. Carberry et al., supra; Local

27 v. Carberry, supra. In consequence, the precise uncertainty that led to the inclusion of the approval provisions has been resolved by this Court and the Court of Appeals over the past two years. An examination of those decisions reveals how this uncertainty has been resolved.

With respect to the disciplinary provisions of the Consent Decree, Anthony Hughes, an IBT officer from local 507 in Cleveland, Ohio, argued before this Court and the Court of Appeals that the Consent Decree's disciplinary changes to the IBT constitution were not binding on him because the IBT did not have the power to unilaterally amend its constitution at judicial direction. The Court of Appeals specifically rejected that argument:

> Hughes contends that the IBT cannot unilaterally change its constitution...and then make the new

> terms binding on [its affiliated local unions and members]. This is so, Hughes maintains, because various provisions of the IBT constitution explicitly reserve the power of amendment to the International Convention of the IBT, by vote of its duly elected delegates.
>
> ...Hughes...clearly could be bound by terms of the disciplinary mechanism set in place by the Consent Decree. This is so because the investigatory and disciplinary mechanism of the Court Officers are proper delegations of the powers of the IBT General President and the GEB within the scope of the IBT constitution that binds all members, and because the IBT constitution contemplates amendment by the GEB, under the circumstances of this case, as a result of judicial direction.

United States v. International Brotherhood of Teamsters, supra, 905 F.2d at 622.

With respect to the election provisions of the Consent Decree, the parameters of the election process set out in the Consent Decree has been continually contested over the past eighteen months by the IBT and the subordinate entities. The Court of Appeals

has recently rejected all challenges to the Consent Decree's electoral changes to the IBT constitution. United States v. International Brotherhood of Teamsters, supra, Slip Opinion, April 12, 1991.

The electoral-related litigation began in October, 1989, where in the October 18, 1989 Order, this Court ruled that the power of the Election Officer at ¶F.12.(D) to "supervise" the 1991 IBT election must "be interpreted in its most expansive and proactive meaning." October 18, 1989 Memorandum & Order, supra, 723 F. Supp. at 206. In that order, this Court further authorized the Election Officer to promulgate rules to govern the delegate and International Officer election. Id. at 207.

On July 10, 1990, this Court approved, as modified, the set of rules promulgated by the Election Officer to govern the 1991

election. July 10, 1990 Opinion & Order, supra, 742 F. Supp. 94. In objecting to those rules, local unions argued that they were not bound by the Consent Decree's electoral changes to the IBT constitution because the IBT could not unilaterally agree to such changes absent their approval at an IBT convention. Those challenges were rejected. Id. at 98.

On April 12, 1991, the Court of Appeals affirmed this Court's July 10, 1990 Opinion. In that decision, the Court of Appeals specifically rejected arguments by IBT subordinate entities that the Consent Decree's electoral provisions were impermissible changes to the IBT constitution. The Court of Appeals adopted its reasoning in the Friedman & Hughes opinion, and held that pursuant to Article XXVI, Section 2 of the IBT constitution,

the IBT could amend its constitution to incorporate the Consent Decree's electoral changes at judicial direction:

> [The Affiliates] argue that those provisions [of the Consent Decree] that displace the IBT Constitution are not binding on them unless and until the amendments have been ratified at an IBT Convention properly constituted under the original IBT Constitution. We disagree.
>
> * * *
>
> Where the subject matter of an IBT constitutional provision relates to the power of the international rather than of local unions, the IBT may agree to a consent decree entered by a court that renders the provision inoperative and that IBT local unions and members are bound by the terms of that decree.
>
> * * *
>
> In the instant matter, the IBT constitutional provisions rendered inoperative concern not the powers of the international union but the method by which international officials--Convention delegates and international officers--are selected....The challenged provisions do not relate to, or intrude upon, the governance of local unions or the conduct of collective bargaining by local unions. ...We believe, therefore, that our decision in the instant matter falls within the

> rationale of Friedman & Hughes and that the Affiliates are bound by the Consent Decree.
>
> * * *
>
> [W]e...believe that an Affiliate or member cannot veto the IBT's settlement of this unique civil RICO action, at least insofar as the Consent Decree provides for membership elections of Convention delegates and IBT officers.

Id. at 3617-3621. This line of decisions has unequivocally determined that the Consent Decree's changes to the IBT constitution are valid and binding without the approval of a convention of the IBT. Id. This Court and the Court of appeals have conclusively held that the IBT had the power to agree to the constitutional changes ordered by the Consent Decree, and that the subordinate entities are so bound by those new provisions. Id.

Accordingly, the Court finds that the specific reason why the parties in including the approval provisions is no

longer at issue. Whatever the outcome of the delegates votes as to the electoral and disciplinary changes to the IBT constitution, those provisions will be in full effect in accordance with the Consent Decree. The Consent Decree's provisions may only be changed through full compliance with ¶L.17, subject to approval by the Government or this Court.

As a result of these determinations, the vote of the delegates on the Consent Decree will now have no legal effect. No action taken by the IBT at the convention can undercut the provisions of this Consent Decree.

I remind the IBT that it voluntarily agreed to the Consent Decree, and with it free rank and file elections. The past two years have demonstrated that the IBT had no intention of living up to its end of the

agreement. The IBT has made every attempt to limit the scope and restrict the terms of the Consent Decree, and each time it has lost. But the time for challenges to the Consent Decree has now passed, and the IBT must live with the Consent Decree as written by the parties, approved by the Court, and repeatedly interpreted by this Court and the Court of Appeals.

I tend to be amused when I remember that the IBT by its representatives have made heroic statements from time to time to reaffirm their commitment to a union free of corruption and their dedication to free elections. How I wish that some of these statements could have been true. Time has proved, however, that these statements are empty of any meaning or purpose for the good of this important union.

D. The Motion for Declaratory and Injunctive Relief the Consent Decree

While this Court's ruling that the electoral provisions of the Consent Decree are binding upon the entire IBT regardless of the outcome of the convention's vote on those amendments also determines the Government's specific requests for relief in its motion, this Court will in the alternative also consider the Government's motion on its merits. In order to decide that motion, this Court must consider (i) whether the parties to the Consent Decree and this Court directly foresaw this situation, and inserted a specific remedy at ¶9(b), (ii) the standards under which these orders should issue, and (iii) the merits of the Government's application. This Court has already held that ¶K.16 permits prospective applications for relief.

1. The Parties' Prior Consideration of this Issue

The IBT argues that the parties' March 14, 1989 colloquy with the Court regarding the inconsistency in the Consent Decree demonstrates that the parties foresaw the possibility that the delegates would vote against the Consent Decree's changes. At the Court's direction, a specific remedy, ¶9(b) of the Consent Decree, was inserted. As a result, the IBT contends that this Court should refrain from issuing this interpretation of the Consent Decree. This argument is without merit.

The specific language of the Consent Decree permits the Government's motion. Paragraph 9(b) provides that in the event that the IBT has not formally voted to amend its constitution by the end of the

IBT convention, the Government may seek "enforcement of this order, contempt, or re-open[ing of] this litigation." ¶9(b) (emphasis added). In this application, the Government is asking this Court to rule that the future practices provision, ¶L17, is still in effect even if the convention delegates vote against the Consent Decree.

The Consent Decree is a binding, coercive order of this Court which obligates the parties to adhere to its terms. Assuming arguendo that the delegates could vote out the Consent Decree's changes, the terms of the Consent Decree would still be in effect as an order of this Court binding on the General President and GEB as the representatives of the IBT. That order includes the Government's right to seek the remedies listed at ¶9(b), and the obligation of the

IBT to adhere to ¶L.17. Such was the specific intent of the parties in constructing the Consent Decree.

In addition, the Government's motion is wholly consistent with the terms of ¶9(b). That provision gave the Government the right to "seek enforcement of this order" in enumerated ways. This motion essentially asks for a determination as to the status of ¶L.17 should the changes not be approved. Rationally, such a ruling must be seen as the Government seeking enforcement of another provision of the Consent Decree.

2. The Standards for the Instant Relief

With respect to the issue of the standards that must be met for this ruling, the IBT's argument that the Government must

meet this circuit's standards for a preliminary injunction and declaratory judgment are not relevant. The Government has properly sought rulings setting out the rights and responsibilities of the parties with respect to the Consent Decree as is their right under ¶K.16. While the IBT correctly identifies the standards for seeking a preliminary injunction or instituting a declaratory judgment action, those standards are not relevant in the context of this ongoing case.

It is appropriate for this Court to issue injunctive and declaratory relief in the ongoing implementation of the Consent Decree. The power of the Court to issue such relief is to be found in the Consent Decree itself. See New York State Association for Retarded Children, Inc. v. Carey, 596 F.2d 27, 38 (2d Cir.), cert.

denied 444 U.S. 836 (1979). As has been stated, this Court finds that ¶K.16 specifically foresaw such rulings.

Further, this Court has the authority under the civil RICO statute to issue "such restraining orders or prohibitions, or take such other actions...as it shall deem proper." 18 U.S.C. §1964(b). The equitable relief moved for by the Government may be issued by this Court in the context of this ongoing civil RICO action.

The Government has demonstrated that it is an appropriate exercise of this Court's equitable power to issue declaratory and injunctive relief in this unique situation. The IBT convention that is to take place June 24-28 1991 will mark a watershed in the American Labor movement. The IBT, this nation's largest labor union,

will vote to nominate candidates for the fall general rank and file secret ballot election for international office for the first time in its history. The convention will mark the culmination of over two years of work to achieve these noble electoral goals. Millions of dollars in union members' funds have already been spent in the course of this election. The convention itself is a large event, with over 2000 IBT delegates, and 10,000 family members travelling to Florida for five days.

I agree with the Government that a matter so important must be settled in advance of the convention. To do otherwise would permit the convention to plunge into total disarray. That ¶K.16 provided for the Court to issue declaratory and injunctive relief in such a situation is

logical and rational. That RICO and the All Writs Act permits such rulings is also clear.

3. The Government's Application

With respect to the declaratory relief, as a result of the subsequent judicial determinations as to the legal status of the Consent Decree, and as an order of this Court, ¶L.17 of the Consent Decree will be in effect for the three-year duration of the Consent Decree. In accordance with that provision, the Government or the Court must approve any changes to the Consent Decree, or the IBT constitutional provisions that implicate the Consent Decree, taken by the IBT.

Paragraph L.17 has been interpreted by the Court of Appeals and this Court such that:

> [T]he IBT [must] refrain from any unilateral changes, 'constitutional or otherwise,' in the broad areas covered by the Consent Decree. Paragraph [L.]17 was obviously intended to protect the background understanding of both parties as to what existing rules, regulations, and constitutional provisions would govern the IBT.

United States v. International Brotherhood of Teamsters, supra, 905 F.2d at 620 (quoting March 13 Opinion & Order, supra, 743 F. Supp. at 163). The convention delegates rejection of the Consent Decree's changes would constitute an alteration of the explicit understanding of the parties as to the procedure for electing international officers. As with any such alteration of the background understanding of the parties, such a change must be in compliance with ¶L.17. Thus, the Court declares that ¶L.17 requires that any substitute electoral procedure must be first approved by the Government or by this

Court. Failing this procedure, the existing procedure set out in the Consent Decree would remain in effect.

With respect to the equitable relief sought by the Government, there can be no doubt that every action must be taken to assure the implementation of this most important portion of the Consent Decree, the honest, fair, secret ballot election. It is undoubtedly an appropriate exercise of this Court's equitable power to enjoin any activity taken by the IBT that would deny the membership their right to decide the legitmate leadership of their union.

Further, the IBT explicitly agreed in ¶E.10 of the Consent Decree that it would not "obstruct or otherwise interfere" with the implementation of the Consent Decree, or the work of the Court Officers. Since the Election Officer must supervise the

election according to the election rules, any action taken to engineer a vote against the current electoral provision would constitute interference with the work of the Election Officer. Accordingly, any action taken to further the rejection of the Consent Decree's changes would violate the existing injunction in the Consent Decree. Thus, the IBT is put on notice that it shall not take action to vote against the very Consent Decree which it signed.

The Government's application is granted.

III. Conclusion

The Government's application for interpretations and rulings of the consent Decree is hereby granted.

IT IS HEREBY ORDERED that the motions to intervene are denied.

IT IS HEREBY ORDERED that the electoral and disciplinary provisions of the Consent Decree are part of IBT constitution and binding on the subordinate entities regardless of the vote of the delegates at the IBT convention unless its provisions are changed in accordance with ¶L.17 of the Consent Decree.

IT IS FURTHER ORDERED that the function of the 1991 IBT International Union nominating convention as delineated in paragraph F.12.(D) of the Consent Decree may not be expanded, limited, altered, or otherwise changed in any way without full compliance with the provisions of ¶L.17 of the Consent Decree.

IT IS FURTHER ORDERED that the IBT, as the representative of the GEB and its employees, members, agents, attorneys and affiliates (including local unions, joint

councils, and area conferences), is hereby enjoined from taking any action in an attempt to cause any expansion, enhancement, limitation, or other change in the function of the 1991 IBT International Union nominating convention as delineated in paragraph F.12.(D) of the Consent Decree, except action expressly authorized by paragraph L.17 of the Consent Decree.

So Ordered.

Dated: May 6, 1991
New York, New York

_____
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	ORDER
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (DNE) OF AMERICA, AFL-CIO et al, Defendants.	)	88 CIV. 4486

WHEREAS, plaintiff United States of America commenced this action on June 28, 1988, by filing a Complaint seeking equitable relief involving the International Brotherhood of Teamsters, AFL-CIO (hereinafter, "the IBT"), pursuant to the civil remedies provisions of the Racketeer Influenced and Corrupt

Organizations ("RICO") Act, 18 U.S.C. § 1964; and

WHEREAS, the Summons and Complaint have been served, answers filed, and pretrial discovery commenced by and between the parties; and

WHEREAS, plaintiff United States of America and defendants IBT and its General Executive Board, William J. McCarthy, Weldon Mathis, Joseph Trarotola, Joseph W. Morgan, Edward M. Lawson, Arnold Weinmeister, Donald Peters, Walter J. Shea, Harold Friedman, Jack D. Cox, Don L. West, Michael J. Riley, Theodore Cozza and Daniel Ligurotis (hereinafter the "union defendants") have consented to entry of this order; and

WHEREAS, the union defendants acknowledge that there have been allegations, sworn testimony and judicial

findings of past problems with La Cosa Nostra corruption of various elements of the IBT; and

WHEREAS, the union defendants agree that there should be no criminal element or La Cosa Nostra corruption of any part of the IBT; and

WHEREAS, the union defendants agree that it is imperative that the IBT, as the largest trade union in the free world, be maintained democratically, with integrity and for the sole benefit of its members and without unlawful outside influence;

IT IS HEREBY ORDERED AND DECREED That:

A. COURT JURISDICTION

1. This Court has jurisdiction over the subject matter of the action, has personal jurisdiction over the parties, and shall retain jurisdiction over this case

until further order of the Court.

2. Upon satisfactory completion and implementation of the terms and conditions of this order, this Court shall entertain a joint motion of the parties hereto for entry of judgment dismissing this action with prejudice and without costs to either party.

B. DURATION

3. The authority of the court officers established in paragraph no. 12 herein shall terminate after the certification of the 1991 election results by the Election Officer for all IBT International Officers as provided in this Order, except as follows:

(1) The Election Officer and the Administrator shall have the authority to resolve all disputes concerning the conduct

and/or results of the elections conducted in 1991 under the authority granted to them under paragraph 12(D) herein, and the Investigations officer and the Administrator shall have the authority to investigate and discipline any corruption associated with the conduct and/or results of the elections to be conducted in 1991 under the authority granted them under paragraph 12(A) and (C) herein, so long as said investigation is begun within six months of the final balloting.

(2) The Investigations Officer and the Administrator shall have the authority to resolve to completion and decide all charges filed by the Investigations Officer on or before the date on which the authority granted to them under paragraphs 12(A) and (C) herein terminates the authority pursuant to subparagraph (3) below.

(3) The role and authority provided for in paragraphs 12 and 13 of this Order regarding the Investigations Officer and the Administrator and their relationship with the Independent Review Board shall terminate not later than nine (9) months after the certification of the 1991 election results.

(4) As used herein, the date referred to as "the certification of the 1991 election results" shall be construed to mean either the date upon which the Election Officer certifies the 1991 election results for all IBT International Officers or one month after the final balloting, whichever is shorter.

C. STATUS OF THE INDIVIDUAL UNION DEFENDANTS

4. The union defendants herein remain as officers of the IBT, subject to all of the terms herein, including the disciplinary authority of the Court-appointed officers, described in paragraph 12(A) herein.

D. CHANGES IN THE IBT CONSTITUTION

5. The portion of Section 6(a) of Article XIX of the IBT Constitution that provides, "Any charge based upon alleged conduct which occurred more than one (1) year prior to the filing of such charge is barred and shall be rejected by the Secretary-Treasurer, except charges based upon the non-payment of dues, assessment and other financial obligations," shall be and hereby is amended to provide for a five

(5) year period, running from the discovery of the conduct giving rise to the charge. This limitation period shall not apply to any actions taken by the Investigations Officer or the Administrator.

6. Section 6(a) of Article XIX of the IBT Constitution shall be deemed and is hereby amended to include the following: "Nothing herein shall preclude the General President and/or General Executive Board from suspending a member or officer facing criminal or civil trial while the charges are pending."

7. Immediately after the conclusion of the IBT elections to be conducted in 1991, Section 8 of Article VI of the IBT Constitution shall be deemed and hereby is amended to provide that a special election be held whenever a vacancy occurs in the office of IBT General President, pursuant

to the procedures described later herein for election of IBT General President.

8. Article IV, Section 2 of the IBT Constitution shall be deemed and is hereby amended to include a new paragraph as follows:

> "No candidate for election shall accept or use any contributions or other things of value received from any employers, representative of an employer, foundation, trust or any similar entity. Nothing herein shall be interpreted to prohibit receipt of contributions from fellow employees and members of this International Union. Violation of this provision shall be grounds for removal from office.

9. (a) The IBT Constitution shall be deemed and hereby is amended to incorporate and conform with all of the terms set forth in this order.

(b) By no later than the conclusion of the IBT convention to be held in 1991, the IBT shall have formally amended the IBT Constitution to incorporate

and conform with all of the terms set forth in this order by presenting said terms to the delegates for a vote. If the IBT has not formally so amended the IBT Constitution by that date, the Government retains the right to seek any appropriate action, including enforcement of this order, contempt or reopening this litigation.

E. PERMANENT INJUNCTION

10. Defendants William J. McCarthy, Weldon Mathis, Joseph Trarotola, Joseph W. Morgan, Edward M. Lawson, Arnold Weinmeister, Donald Peters, Walter J. Shea, Harold Friedman, Jack D. Cox, Don L. West, Michael J. Riley, Theodore Cozza and Daniel Ligurotis, as well as any other or future IBT General Executive Board members, officers, representatives, members and

employees of the IBT, are hereby permanently enjoined from committing any acts of racketeering activity, as defined in 18 U.S.C. § 1961 et seq., and from knowingly associating with any member or associate of the Colombo Organized Crime Family of La Cosa Nostra, the Genovese Organized Crime Family of La Cosa Nostra, the Gambino Organized Family of La Cosa Nostra, the Lucchese Organized Crime Family of La Cosa Nostra, the Bonnano Organized Crime Family of La Cosa Nostra, any other Organized Crime Families of La Cosa Nostra or any other criminal group, or any person otherwise enjoined from participating in union affairs, and from obstructing or otherwise interfering with the work of the court-appointed officers or the Independent Review Board described herein.

11. As used herein, the term, "knowingly associating," shall have the same meaning as that ascribed to that term in the context of comparable federal proceedings or federal rules and regulations.

F. COURT-APPOINTED OFFICERS

12. The Court shall appoint three (3) officers -- an Independent Administrator, an Investigations Officer and an Election Officer -- to be identified and proposed by the Government and the union defendants, to oversee certain operations of the IBT as described herein. The parties shall jointly propose to the Court at least two persons for each of these three positions. Such proposal shall be presented to the Court within four weeks of the date of the entry of this Order, except that for good

cause shown such period may be extended by the Court. Except as otherwise provided herein, the duties of those three officers shall be the following:

(A) DISCIPLINARY AUTHORITY -- From the date of the Administrator's appointment until the termination of the Administrator's authority as set forth in paragraph 3(3) herein, the Administrator shall have the rights and powers as the IBT's General President and/or General Executive Board under the IBT's Constitution (including Articles VI and XIX thereof) and Title 29 of the United States Code to discharge those duties which relate to disciplining corrupt or dishonest officers, agents, employees or members of the IBT or any of its affiliated entities (such as IBT Locals, Joint Councils and Area Conferences), and appointing temporary

trustees to run the affairs of any such affiliated entities. The Investigations Officer shall have the authority to investigate the operation of the IBT or any of its affiliates and, with cause,

(i) To initiate disciplinary charges against any officer, member or employee of the IBT or any of its affiliates in the manner specified for members under the IBT Constitution and,

(ii) To institute trusteeship proceedings for the purposes and in the manner specified in the IBT Constitution.

Prior to instituting any trusteeship proceeding the Investigations Officer shall notify the General President of the Investigations Officer's plan to institute said trusteeship proceeding and the basis

therefor and give the General President ten (10) days to exercise his authority pursuant to the IBT Constitution to institute such trusteeship proceedings. If the General President timely institutes such proceedings and/or a trusteeship is imposed, the Investigations Officer and the Administrator shall have authority to review any action thus taken by the General President and/or any trusteeship imposed thereafter and to modify any aspect of either of the above at any time and in any manner consistent with applicable federal law. If the General President fails to institute trusteeship proceedings within the ten-day period prescribed herein, the Investigations Officer may immediately proceed in accordance with the authority specified above.

When the Investigations Officer files charges, the following procedures shall be observed:

(a) the Investigations Officer shall serve written specific charges upon the person charged;

(b) the person charged shall have at least thirty (30) days prior to hearing to prepare his or her defense;

(c) a fair and impartial hearing shall be conducted before the Administrator;

(d) the person charged may be represented by an IBT member at the hearing; and

(e) the hearing shall be conducted under the rules and procedures generally applicable to labor arbitration hearings.

The Administrator shall preside at hearings in such cases and decide such cases using a "just cause" standard. The

Investigations Officer shall present evidence at such hearings. As to decisions of the IBT General Executive Board on disciplinary charges and trusteeship proceedings during the Administrator's tenure, the Administrator shall review all such decisions, with the right to affirm, modify or reverse such decisions and, with respect to trusteeship proceedings, to exercise the authority granted above in this paragraph. Any decision of the Administrator shall be final and binding, subject to the Court's review as provided herein. For a period of up to fourteen (14) days after the Administrator's decision, any person charged or entity placed in trusteeship adversely affected by the decision shall have the right to seek review by this Court of the Administrator's decision. The Administrator shall also

have the right to establish and disseminate new guidelines for investigation and discipline of corruption within the IBT. All of the above actions of the Administrator and Investigations Officer shall be in compliance with applicable Federal laws and regulations.

(B) REVIEW AUTHORITY -- From the date of the Administrator's appointment until the certification of the IBT elections to be conducted in 1991, the Administrator shall have the authority to veto whenever the Administrator reasonably believes that any of the actions or proposed actions listed below constitutes or furthers an act of racketeering activity within the definition of Title 18 U.S.C. § 1961, or furthers or contributes to the association directly, or indirectly, of the

IBT or any of its members with the LCN or elements thereof:

(i) any expenditures or proposed expenditure of International Union funds or transfer of International Union property approved by any officers, agents, representatives or employees of the IBT,

(ii) any contract or proposed contract on behalf of the International Union, other than collective bargaining agreements, and

(iii) any appointment or proposed appointments to International Union officer of any officer, agent, representative or employee of the IBT.

In any case where the Administrator exercises veto authority, the action or proposed action shall not go forward. The Administrator, upon request of the IBT's General President or General

Executive Board, shall, within three (3) days, advise the IBT's General President and/or General Executive Board whichever is applicable, of the reasons for any such veto. For a period of up to fourteen (14) days after the Administrator's decision, the IBT's President and/or General Executive Board shall have the right to seek review by this Court of the Administrator's decision. The Administrator may prescribe any reasonable mechanism or procedure to provide for the Administrator's review of actions or proposed actions by the IBT, and every officer, agent, representative or employee of the IBT shall comply with such mechanism or procedure.

(C) ACCESS TO INFORMATION -- (i) The Investigations Officer shall have the authority to take such reasonable steps

that are lawful and necessary in order to be fully informed about the activities of the IBT in accordance with the procedures as herein established. The Investigations Officer shall have the right:

(a) To examine books and records of the IBT and its affiliates, provided the entity to be examined receives three (3) business days advance notice in writing, and said entity has the right to have its representatives present during said examination.

(b) To attend meetings or portions of meetings of the General Executive Board relating in any way to any of the officer's rights or duties as set forth in this Order, provided that prior to any such meeting, the officer shall receive an agenda for the meeting and then give

notice to the General President of the officer's anticipated attendance.

(c) To take and require sworn statements or sworn in-person examinations of any officer, member, or employee of the IBT provided the Investigations Officer has reasonable cause to take such a statement and provided further that the person to be examined receives at least ten (10) days advance notice in writing and also has the right to be represented by an IBT member or legal counsel of his or her own choosing, during the course of said examination.

(d) To take, upon notice and application for cause made to this Court, which shall include affidavits in support thereto, and the opportunity for rebuttal affidavits, the sworn statements or sworn in person examination of persons who are agents of the IBT (and not covered in subparagraph (c) above).

(e) To retain an independent auditor to perform audits upon the books and records of the IBT or any of its affiliated entities (not including benefit funds subject to ERISA), provided said entity receives three (3) business days advance notice in writing and said entity has the right to have its representatives present during the conduct of said audit.

(ii) The Independent Administrator and the Election Officer shall have the same rights as the Investigations Officer as provided in sections (a), (b), (c) and (d) of A, herein.

(iii) The Independent Administrator, Investigations Officer and Election Officer shall each be provided with suitable office space at the IBT headquarters in Washington, D.C.

D. IBT ELECTION -- The IBT Constitution shall be deemed amended, and is hereby amended, to provide for the following new election procedures:

(i) The procedures described herein shall apply to elections of the IBT's General President, General Secretary-Treasurer, International Union Vice Presidents, and International Union Trustees;

(ii) Delegates to the IBT International convention at which any International Union officers are nominated or elected shall be chosen by direct rank-and-file secret balloting shortly before the convention (but not more than six months before the convention, except for those delegates elected at local union elections scheduled to be held in the fall

of 1990), and with all convention Candidate election voting by secret ballot each delegate individually;

(iii) Delegates shall nominate candidates for eleven (11) Regional Vice Presidents, as follows: Three (3) from the Eastern Conference, three (3) from the Central Conference, two (2) from the Southern Conference, two (2) from the Western Conference, and one (1) from the Canadian Conference. In addition, there shall be nominated candidates for five (5) Vice Presidents to be elected at large. All duly nominated Vice Presidents shall stand for election conducted at local unions on the same ballot and time as the election of General President and General Secretary-Treasurer, as provided herein;

(iv) At such an International convention, after the nomination of

International Union Vice Presidents and election of Trustees, all delegates shall then vote for nominees for the offices of IBT General President and Secretary-Treasurer;

(v) To qualify for the ballot for the direct rank-and-file voting for IBT General President, Secretary-Treasurer, and Vice President, candidates must receive at least five (5) percent of the delegate votes at the International convention, for the at large position, or by conference for regional positions, as the case may be;

(vi) No person on the ballot for the position of IBT General President may appear on the ballot in the same election year for the position of Secretary-Treasurer; and further no member shall be a candidate for more than one (1) Vice President position;

(vii) No less than four (4) months and no more than six (6) months after the International convention at which candidates were nominated, the IBT General President, General Secretary-Treasurer and Vice Presidents shall be elected by direct rank-and-file voting by secret ballot in unionwide, one-member, one-vote elections for each at large position, and conference wide, one-member one-vote elections for each regional position;

(viii) All direct rank-and-file voting by secret ballot described above shall be by in-person ballot box voting at local unions or absentee ballot procedures where necessary, in accordance with Department of Labor regulations; and

(ix) The current procedures under the IBT Constitution for filling a vacancy between elections in the office of General

Secretary-Treasurer, International Trustee, and International Vice President shall remain in effect.

The Election Officer shall supervise the IBT election described above to be conducted in 1991 and any special IBT elections that occur prior to the IBT elections to be conducted in 1991. In advance of each election, the Election Officer shall have the right to distribute materials about the election to the IBT membership. The Election Officer shall supervise the balloting process and certify the election results for each of these elections as promptly as possible after the balloting. Any disputes about the conduct and/or results of elections shall be resolved after hearing by the Administrator.

The union defendants consent to the Election Officer, at Government

expense, to supervise the 1996 IBT elections. The union defendants further consent to the U.S. Department of Labor supervising any IBT elections or special elections to be conducted after 1991 for the office of the IBT General President, IBT General Secretary-Treasurer, IBT Vice President, and IBT Trustee.

At the IBT 1991 International Convention, the delegates shall be presented with these aforesaid amendments for vote; provided further that nothing herein shall be deemed or interpreted or applied to abridge the Landrum-Griffin free speech right of any IBT officer, delegate or member, including the parties hereto.

(E) REPORTS TO MEMBERSHIP -- The Administrator shall have the authority to distribute materials at reasonable times to the membership of the IBT about the

Administrator's activities. The reasonable cost of distribution of these materials shall be borne by the IBT. Moreover, the Administrator shall have the authority to publish a report in each issue of the International Teamster concerning the activities of the Administrator, Investigations Officer and Election Officer.

(F) REPORTS TO THE COURT -- The Administrator shall report to the Court whenever the Administrator sees fit but, in any event, shall file with the Court a written report every three (3) months about the activities of the Administrator, Investigations Officer and Election Officer. A copy of all reports to the Court by the Administrator shall be served on plaintiff United States of America, the IBT's General President and duly designated IBT counsel.

(G) HIRING AUTHORITY -- The Administrator, the Investigations Officer and the Election Officer shall have the authority to employ accountants, consultants, experts, investigators or any other personnel necessary to assist in the proper discharge of their duties. Moreover, they shall have the authority to designate persons of their choosing to act on their behalf in performing any of their duties, as outlined in subparagraphs above. Whenever any of them wish to designate a person to act on their behalf, they shall give prior written notice of the designation to plaintiff United States of America, and the IBT's General President; and those parties shall then have the right, within fourteen (14) days of receipt of notice, to seek review by this Court of

the designation, which shall otherwise take effect fourteen (14) days after receipt of notice.

(H) COMPENSATION AND EXPENSE -- The compensation and expense of the Administrator, the Investigations Officer and the Election Officer (and any designee or persons hired by them) shall be paid by the IBT. Moreover, all costs associated with the activities of these three officials (and any designee or persons hired by them) shall be paid by the IBT. The Administrator, Investigations Officer and Election Officer shall file with the Court (and serve on plaintiff United States of America and the IBT's General President and designated IBT counsel) an application, including an itemized bill, with supporting material, for their services and expenses once every three months. The IBT's General

President shall then have fourteen (14) business days following receipt of the above in which to contest the bill before this Court. If the IBT's President fails to contest such a bill within that 14-day period, the IBT shall be obligated to pay the bill. In all disputes concerning the reasonableness of the level or amount of compensation or expense to be paid, the Court and parties shall be guided by the level of payment as authorized and approved by the IBT for the payment of similar services and expenses.

(I) APPLICATION TO THE COURT -- The Administrator may make any application to the Court that the Administrator deems warranted. Upon making any application to the Court, the Administrator shall give prior notice to plaintiff United States of America, the

IBT's General President and designated IBT counsel and shall serve any submissions filed with the Court on plaintiff United States of America, the IBT's General President and designated IBT counsel. Nothing herein shall be construed authorizing the parties or the Court-appointed officers to modify, change or amend the terms of this Order.

G. INDEPENDENT REVIEW BOARD

Following the certification of the 1991 election results, there shall be established an Independent Review Board, (hereinafter, referred to as the "Review Board"). Said Board shall consist of three members, one chosen by the Attorney General of the United States, one chosen by the IBT and a third person chosen by the Attorney General's designee and the IBT's designee.

In the event of a vacancy, the replacement shall be selected in the same manner as the person who is being replaced was selected.

(a) The Independent Review Board shall be authorized to hire a sufficient staff of investigators and attorneys to investigate adequately (1) any allegations of corruption, including bribery, embezzlement, extortion, loan sharking, violation of 29 U.S.C. §530 of the Landrum Griffin Act, Taft-Hartley Criminal violations or Hobbs Act violations, or (2) any allegations of domination or control or influence of any IBT affiliate, member or representative by La Cosa Nostra or any other organized crime entity or group, or (3) any failure to cooperate fully with the Independent Review Board in any investigation of the foregoing.

(b) The Independent Review Board

shall exercise such investigative authority as the General President and General Secretary-Treasurer are presently authorized and empowered to exercise pursuant to the IBT Constitution, as well as any and all applicable provisions of law.

(c) All officers, members, employees and representatives of the IBT and its affiliated bodies shall cooperate fully with the Independent Review Board in the course of any investigation or proceeding undertaken by it. Unreasonable failure to cooperate with the Independent Review Board shall be deemed to be conduct which brings reproach upon the IBT and which is thereby within the Independent Review Board's investigatory and decisional authority.

(d) Upon completion of an investigation, the Independent Review Board

shall issue a written report detailing its findings, charges, and recommendations concerning the discipline of union officers, members, employees, and representatives and concerning the placing in trusteeship of any IBT subordinate body. Such written reports shall be available during business hours for public inspection at the IBT office in Washington, D.C.

(e) Any findings, charges, or recommendations of the Independent Review Board regarding discipline or trusteeship matters shall be submitted in writing to any appropriate IBT entity (including designating a matter as an original jurisdiction case for General Executive Board review), with a copy sent to the General President and General Executive Board. The IBT entity to which a matter is

referred shall thereupon promptly take whatever action is appropriate under the circumstances, as provided by the IBT Constitution and applicable law. Within 90 days of the referral, that IBT entity must make written findings setting forth the specific action taken and the reasons for that action.

(f) The Independent Review Board shall monitor all matters which it has referred for action if, in its sole judgment, a matter has not been pursued and decided by the IBT entity to which the matter has been referred in a lawful, responsible, or timely manner, or that the resolution proposed by the relevant IBT entity is inadequate under the circumstances, the Independent Review Board shall notify the IBT affiliate involved of its view, and the reasons therefor. A copy

of said notice shall be sent by the Independent Review Board shall notify the IBT affiliate involved of its view, and the reasons therefor. A copy of said notice shall be sent by the Independent Review Board, to the General President and the General Executive Board.

(g) Within 10 days of the notice described in paragraph (f) above, the IBT entity involved shall set forth in writing any and all additional actions it has taken and/or will take to correct the defects set forth in said notice and a deadline by which said action may be completed. Immediately thereafter, the Independent Review Board shall issue a written determination concerning the adequacy of the additional action taken and/or proposed by the IBT entity involved. If the Independent Review Board concludes that the

IBT entity involved has failed to take or propose satisfactory action to remedy the defects specified by the Independent Review Board's notice, the Independent Review Board shall promptly convene a hearing, after notice to all affected parties. All parties shall be permitted to present any facts, evidence, or testimony which is relevant to the issue before the Independent Review Board. Any such hearing shall be conducted under the rules and procedures generally applicable to labor arbitration hearings.

(h) After a fair hearing has been conducted, the Independent Review Board shall issue a written decision which shall be sent to the General President, each member of the General Executive Board, and all affected parties.

(i) The decision of the Independent Review Board shall be final and binding, and the General Executive Board shall take all action which is necessary to implement said decision, consistent with the IBT Constitution and applicable Federal laws.

(j) The Independent Review Board shall have the right to examine and review the General Executive Board's implementation of the Independent Review's decisions; in the event the Independent Review Board is dissatisfied with the General Executive Board's implementation of any of its decision, the Independent Review Board shall have the authority to take whatever steps are appropriate to insure proper implementation of any such decision.

(k) The Independent Review Board shall be apprised of and have the authority

to review any disciplinary or trusteeship decision of the General Executive Board, and shall have the right to affirm, modify, or reverse any such decision. The Independent Review Board's affirmance, modifications, or reversal of any such General Executive Board decision shall be in writing and final and binding.

(l) The IBT shall pay all costs and expense of the Independent Review Board and its staff (including all salaries of Review Board members and staff). Invoices for all such costs and expense shall be directed to the General President for payment.

(m) The Investigations Officer and the Administrator shall continue to exercise the investigatory and disciplinary authority set forth in paragraph 12 above for the limited period set forth in

paragraph 3(3) above, provided, however, that the Investigations Officer and the Administrator may, instead, refer any such investigation or disciplinary matter to the Independent Review Board.

(n) The IBT Constitution shall be deemed and hereby is amended to incorporate all of the terms relating to the Independent Review Board set forth above in this paragraph. This amendment shall be presented to the delegates to the 1991 Convention for vote.

H. INDEMNIFICATION

13. The IBT shall purchase a policy of insurance in an appropriate amount to protect the Administrator, the Investigations Officer, the Election Officer and persons acting on their behalf from personal liability for any of their

actions on behalf of the IBT, the Administrator, the Investigations Officer or the Election Officer. If such insurance is not available, or if the IBT so elects, the IBT shall indemnify the Administrator, Investigations Officer, Election Officer and persons acting on their behalf from any liability (or costs incurred to defend against the imposition of liability) for conduct taken pursuant to this order. That indemnification shall not apply to conduct not taken pursuant to this order. In addition, the Administrator, the Investigations Officer, the Election Officer and any persons designated or hired by them to act on their behalf shall enjoy whatever exemptions from personal liability may exist under the law for court officers.

I. IBT LEGAL COUNSEL

14. During the term of office of the court-appointed officers, the IBT General President shall have the right to employ or retain legal counsel to provide consultation and representation to the IBT with respect to this litigation, to negotiate with the appropriate official and to challenge the decisions of the court-appointed officers, and may use union funds to pay for such legal consultation and representation. The Administrator's removal powers and authority over union expenditures shall not apply to such legal consultation and representation.

J. NON-WAIVER

15. To the extent that such evidence would be otherwise admissible under the Federal Rules of Evidence, nothing herein

shall be construed as a waiver by the United States of America or the United States Department of Labor of its right to offer proof of any allegation contained in the Complaint, Proposed Amended Complaint, declarations or memoranda filed in this action, in any subsequent proceeding which may lawfully be brought.

K. APPLICATION TO COURT

16. This Court shall retain jurisdiction to supervise the activities of the Administrator and to entertain any future applications by the Administrator or the parties. This Court shall have exclusive jurisdiction to decide any and all issues relating to the Administrator's actions or authority pursuant to this order. In reviewing actions of the Administrator, the Court shall apply the

same standard of review applicable to review of final federal agency action under the Administrative Procedure Act.

L. FUTURE PRACTICES

17. The parties intend the provisions set forth herein to govern future IBT practices in those areas. To the extent the IBT wishes to make any changes, constitutional or otherwise, in those provisions, the IBT shall give prior written notice to the plaintiff, through the undersigned. If the plaintiff then objects to the proposed changes as inconsistent with the terms and objectives of this order, the change shall not occur; provided, however, that the IBT shall then have the right to seek a determination from this Court, or, after the entry of judgment dismissing this action, from this Court or

any other federal court of competent jurisdiction as to whether the proposed change is consistent with the terms and objectives set forth herein.

M. SCOPE OF ORDER

18. Except as provided by the terms of this order, nothing else herein shall be construed or interpreted as affecting or modifying: (a) the IBT Constitution; (b) the Bylaws and Constitution of any IBT affiliates; (c) the conduct and operation of the affairs of the IBT or any IBT-affiliated entity or any employee benefit fund as defined in ERISA or trust fund as defined by Section 302(c) of the Labor Management Relations Act, as amended; (d) the receipt of any compensation or benefits lawfully due or vested to any officer, member or employee of the IBT or

any of its affiliates and affiliated benefit fund; or (e) the term of office of any elected or appointed IBT officer or any of the officers of any IBT-affiliated entities.

N. NON-ADMISSION CLAUSE

19. Nothing herein shall be construed as an admission by any of the individual union defendants of any wrongdoing or breach of any legal or fiduciary duty or obligation in the discharge of their duties as IBT officers and members of the IBT General Executive Board.

O. FUTURE ACTIONS

20. Nothing herein shall preclude the United States of America or the United States Department of Labor from taking any appropriate action in regard to any of the

union defendants in reliance on federal laws, including an action or motion to require disgorgement of pension, severance or any other retirement benefits of any individual union officer defendant on whom discipline is imposed pursuant to paragraph 12 above.

P. LIMITS OF ORDER

21. Nothing herein shall create or confer or is intended to create or confer, any enforceable right, claim or benefit on the part of any person or entity other than to the parties hereto and the court-appointed officers established herein. As to the undersigned defendants hereto, this order supercedes the order of the Court entered on June 28, 1988, as thereafter extended.

Q. EXECUTION

22. Each of the undersigned individual defendants has read this order and has had an opportunity to consult with counsel before signing the order.

March 14, 1989.

DAVID N. EDELSTEIN
United States District Judge

CONSENTED TO:

BENITO ROMANO
United States Attorney
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

Attorney for Plaintiff
United States of America

By: _____
RANDY M. MASTRO
Assistant United States Attorney

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Attorneys for Defendants IBT
and its General Executive Board

By: _____
JED S. RAKOFF

JAMES T. GRADY, ESQ.
General Counsel
International Brotherhood of
Teamsters, Chauffeurs,
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25 Louisiana Avenue, N.W.
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By: _____
JAMES T. GRADY, ESQUIRE

_____
Defendant WILLIAM J. McCARTHY

_____
Defendant WELDON MATHIS

_____
Defendant JOSEPH TREROTOLA

_____
Defendant JOSEPH W. MORGAN

Defendant EDWARD M. LAWSON

Defendant ARNOLD WEINMEISTER

Defendant DONALD PETERS

Defendant WALTER J. SHEA

Defendant HAROLD FRIEDMAN

Defendant JACK D. COX

Defendant DON L. WEST

Defendant MICHAEL J. RILEY

Defendant THEODORE COZZA

Defendant DANIEL LIGUROTIS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

v. 88 Civil 4486

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,

Defendants.

----------x

May 6, 1991
11:00 a.m.,

Before:

HON. DAVID N. EDELSTEIN,

District Judge

APPEARANCES

OTTO G. OBERMAIER,
United States Attorney for the
Southern District of New York
EDWARD FEGUSON,
Assistant United States Attorney
Attorney for the Plaintiff

SOUTHERN DISTRICT

APPEARANCES: (Continued)

FREDRERICK B. LACEY, ESQ.,
STUART ALDEROTY, ESQ.,
Attorneys for Administration Officer

JONES, DAY, REAVIS & POGUE
Attorneys for Investigation Officer
CHARLES M. CARBERRY, ESQ.
ROBERT GAFFEY, ESQ.,

MICHAEL HOLLAND, ESQ.,
Attorney for Election Office

GOULSTON & STORRS
Attorneys for IBT
DENIS M. KING, ESQ.,
and
GRADY and DWYER
JAMES T. GRADY, ESQ.,

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THE COURT: Here we go again.

I lifted that comment based upon my recent recollection of Mr. Reagan's first debate with President Carter. Apropos of some comments made by the president, Mr. Reagan, with a broad smile and a shrug of his shoulders, said, "Here we go again."

We stand here on the eve of the first direct, secret ballot election in the unfortunate and very sordid history of the IBT.

It is my firm conviction that this election will give the membership of this union the opportunity to themselves elect legitimate leadership to govern this country's largest labor union, despite all efforts that may be made to frustrate that purpose. I don't think it an excess of

rhetoric to say that we stand at a historic moment.

The government has recently moved this court for orders relating to the vote to be taken by the delegates to the 1991 IBT convention on the consent decree's changes in the IBT Constitution. I have carefully considered that motion and have this morning entered an opinion deciding that matter in extenso. That will be delivered to you shortly.

I have determined that as a result of decisions rendered in the past two years, it has been settled that the IBT had the power to bind the entire union to the consent decree's changes in the IBT Constitution without a vote of the delegates to a convention. Therefore, the vote of the delegates on the consent decree to be taken at the 1991 convention will now

have no legal effect. No action taken by the IBT at the convention can or will be permitted to undercut the provisions of this consent decree.

I remind the IBT that it voluntarily agreed to the consent decree with its free rank and file elections. The past two years have demonstrated clearly that the IBT had no intention of living up to its end of the agreement. The IBT has made every attempt to limit and restrict the terms of the consent decree and each time it has lost, but has not learned any lessons. But the time for challenges to the consent decree has now past and the IBT must live with the consent decree as written by the parties, approved by the court and repeatedly interpreted by this court and the Court of Appeals.

I tend to be amused in a rather paradoxical way when I remember that the IBT, by its representatives, have made heroic statements from time to time, both here and before a constitutionally convened Senate committee, to reaffirm their commitment to a union free of corruption and their dedication to free elections.

You can't imagine how I wish that some of those statements could have been true. Time, however, has proved otherwise. The statements have been empty of any meaning or purpose for the good of this important union.

Strong language. I'm sorry I have to indulge in that. Hippocracy is not a substitute for free elections. There will now be free elections and nothing short will be countenenced.

I still have under consideration whether my presence is needed to provide assurance that the convention will proceed smoothly and in conformity with the many decrees issued by this court and subsequently affirmed by the Court of Appeals.

Now, very recently I intended to save my time, avoid the need of going to this convention and thought that I would enter a stop-gap order, nothing more, nothing less. What happened? An appeal.

I'm very curious to see what the court is going to do with that order and how revealing it is about the IBT's intention not even willing to agree to a small step that would save time and money.

However, if there is any need for the assurance that my presence may provide at this convention as a barrier too high to

jump over so that this convention may proceed smoothly, I will take the time. It means adjusting a very heavy criminal calendar, but I'm sure there are enough collegial colleagues on this bench to help me over that hurdle. And here we are. The opinion is now available. You may have it and that's it.

If there is any thought on your part that you would like to apply for a stay, I would consider that now, and I will tell you it is rejected out of hand because it doesn't meet any of the criteria that the rules call for for a stay. I see no basis for it at all.

That's it.

Now you have an opportunity to read this opinion, and I would like some input.

Do you think -- well, why don't I do this. Why don't you read the opinion, let

me hear from you if you think it is necessary for me to be present at this convention in order to get some guarantee or assurance that I am there with a courtroom available, with a staff in place to deal with whatever problems may arise.

I will be in the robing room.

(Recess)

THE COURT: Letter dated May 2, 1991 handed to me by Mr. Holland which sets forth in rather lengthy fashion the kind of subject which may be necessary here.

MR. LACEY: What I have to say in response to your question, your Honor, I think may moot that.

THE COURT: What?

MR. LACEY: What I have to say in response to your question that you raised just as you raised earlier may moot that communication, because you invited a

comment from us on whether we think that it's advisable for you to be present in the court house in Atlanta during the week of the convention -- I'm sorry -- in Orlando, and I think it's a must that you be there.

History has shown us that on some very important matters, we have been unable to reach a negotiated conclusion and we have had to come to your Honor for a resolution. I think --

THE COURT: That's what I tried to stop with that last order stop-gap for the government and the IBT to say about any perceived conduct stop, let's talk to the judge. That went up on appeal.

However, I think you are right.

MR. LACEY: I think it's a must.

THE COURT: I think you are right.

MR. LACEY: I tell you this, let me give you the reasons I have in mind.

First of all, I am satisfied that what we were trying to work out here was a second or third or fourth best. Telephone communication just is not going to be workable.

I am concerned that something very significant might arise, there will be only one way to deal with it, that would be to bring everybody back up and stop the convention and that makes absolutely no sense.

So I think this:

I am not suggesting that your Honor be at the hotel, the convention site, because that makes no sense, either.

THE COURT: All right.

MR. LACEY: But if your Honor is in the court house in Orlando, I don't know the bureaucratic steps you have to go through, empowered to rule there as if you were

sitting here, I'm satisfied that that is going to make, make a big difference in what happens at that convention, and I would urge it on your Honor just as strongly as I can.

THE COURT: Well, you will recall that initially, at the very beginning, I though that that was the only way to go.

Then I foresaw the expense of my own scheduling and I thought perhaps I could do something a little more convenient, but I have not been able to succeed in that.

So your letter, Mr. Holland, is marked for identification, and under the circumstances it is moot.

You know, I have had a nagging feeling that I have forgotten something. It has bothered me again and again. Then I would forget about it.

Now, I am instructing the government to do the following:

I would like the government to deliver to my chambers a duplicate of the Roy Williams deposition and the accompanying transcript.

Do you have that thus far, Mr. Ferguson?

MR. FERGUSON: Yes, your Honor.

THE COURT: I also request that the government have the original of the deposition and a transcript at Orlando.

Why? I may find it appropriate to play this testimony before the convention, and I will not hesitate to do so if I think that is necessary.

Keep that in mind.

Will you do that, Mr. Ferguson?

MR. FERGUSON: Yes, well, your Honor.

THE COURT: And will you also proceed to make all arrangements for me and my staff as follows:

My two law clerks and a reporter. I have no problem, I'm sure, obtaining secretarial help in Orlando and a deputy clerk as well, so I will not burden the expense account with more help than I need. And go ahead and do it forthwith.

MR. FERGUSON: If your Honor please, those arrangements to include hotel and travel?

THE COURT: Yes. I don't think the Orlando federal court would like to have it said that I slept there.

MR. FERGUSON: Understood, your Honor. I am just trying to find exactly --

THE COURT: All convenience, transportation, et cetera.

MR. FERGUSON: Yes, your Honor.

THE COURT: Do it forthwith and make sure that I have those tapes and the testimony in my chambers.

MR. LACEY: Mr. Ferguson indicated he might want to address one or two other matters, your Honor, while we are here.

MR. FERGUSON: Your Honor, in reading over the court's opinion, a couple of matters occurred to me that if we could clear them up right now it might safe us some future litigation.

THE COURT: All right. Don't ambush me.

MR. FERGUSON: I won't, your Honor.

On page 22 of the opinion, the first full paragraph, beginning with, "With respect to the declaratory relief, as a result of the subsequent judicial determinations as to the legal status of the consent decree, and as an order of this court, paragraph L.17 of the consent decree

will be in effect for the three-year duration of the consent decree. In accordance with that provision, the government or the court must approve any changes to the consent decree, or the IBT constitutional provisions that implicate the consent decree, taken by the IBT."

My question for clarification purposes is just to make sure so we can obviate an argument later on that paragraph 17 of the decree is no longer in effect after the court appointed officers have completed their tenures.

I would just like your Honor to clarify for the record that paragraph 17 of the decree, like the entire consent decree, is a permanent amendment to the IBT Constitution.

THE COURT: I will do that in an amended brief order.

MR. FERGUSON: Thank you, your Honor.

My second and last request for clarification pertains to page 23 of the order, the second to the last paragraph, beginning with the word, "Further," and I note in full as follows:

THE COURT: The IBT explicitly?

MR. FERGUSON: Yes.

"Further, the IBT explicitly agreed in paragraph E.10 of the consent decree that it would not 'obstruct or otherwise interfere' with the implementation of the consent decree, or the work of the court officers. Since the election officer must supervise the election according to the election rules, any action taken to engineer a vote against the current he electoral provision would constitute interference with the work of the election officer. Accordingly, any action taken to

further the rejection of the consent decree's changes would violate the existing injunction in the consent decree. Thus, the IBT is put on notice that it shall not take action to vote against the very consent decree which it signed."

My question for clarification purposes, your Honor, is to make sure that the paragraph I just read does not conflict with the provision in the consent decree itself that requires that the consent decree amendments to the IBT constitution be put before the delegates for a vote.

What I understand your Honor to be saying in this opinion is that the consent decree may be put to the delegates for a vote. However, the outcome of that vote is of no legal effect.

THE COURT: That's what I have said.

MR. FERGUSON: As your Honor stated on page 17 of the opinion. But I just want to make sure that nothing in this --

THE COURT: What language would you suggest for clarification?

MR. FERGUSON: A simple clarification that would say nothing in this opinion shall be construed to alter the provisions of the consent decree that requires the consent decree amendments to the IBT constitution to be put to the delegates for a vote.

THE COURT: I think that is a helpful suggestion and I accept it and that will also be included in the brief order that I intend to file in accordance with this.

MR. KING: Your Honor, if the court please, my name is Denis King --

THE COURT: Oh, I know.

MR. KING: I am here in Mr. Pierce's absence.

THE COURT: You need no introduction.

MR. KING: I had two questions originally, but Mr. Ferguson has --

THE COURT: If you have any questions, write it out. I will not be ambushed. If you have any questions, write it out.

MR. KING: Very well, your Honor.

THE COURT: So I can think about it. All right?

MR. FERGUSON: Thank you, your Honor.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

v. 88 Civ. 4486 DNE

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Defendant.

----------x

March 20, 1991
10:30 a.m.,

Before:

HON. DAVID N. EDELSTEIN,

District Judge

APPEARANCES

OTTO G. OBERMAIER,
United States Attorney for the
Southern District of New York
Attorney for plaintiff
EDWARD FERGUSON,
PETER SPRUNG
Assistant United States Attorneys

JAMES T. GRADY
BRIAN MAAS
RUDOLPH F. PIERCE
Attorneys for defendant

(Case called)

THE COURT: This is an anniversary. Last week marked the second anniversary of the signing of this historic consent decree between the government and the International Brotherhood of Teamsters. Despite the enormous and persistent opposition during the past two years, there has been progression towards achieving the underlying purpose and intent of this decree, which is to return this great union, which has been clouded by evilness, to its members.

As I have said repeatedly and often, the linchpin of this unprecedented effort is the provision that the next leadership of the IBT shall be chosen by the rank and file itself in an open, free and democratic election, without any fear of coercion or any effort to undercut the purpose of this

decree, to return this union to its rightful rank and file people.

It is my determination that a free and open democratic election is an unassailable and inviolate goal. It is the compass by which this case is directed.

By bringing the instant motion, the government seeks to insure the reality of this election. The papers submitted with this motion, however, leave some issues unclear, which must be brought into focus and as I continue I will outline.

1. I need some more light on the specific harm that the government foresees. I need some very clear definition of the specific nature of the remedies they seek from this court.

And so that will be a matter for oral argument to bring to this court's attention.

I'm sure all you veterans at the bar are aware of a basic law in physics, sound does not travel faster than light. I expect you to be brief, to the extent that you bring to my attention the clarity that I require by succinct statements.

So, let me continue for just one moment before we get on.

I have received a letter dated March 15, 1991 from Judge Lacey, the Independent Administrator of the International Brotherhood of Teamsters, dealing with how best to assure the presence of the court during the IBT International Convention to be held June 24 to 28, 1991, so that I may be present to attend to any problems which may arise. I anticipate, based upon my experience, that there will be many problems, many maneuvers and many strategies and, accordingly, I find that

none of the options laid out for my consideration are adequate enough to give me the assurance that I will be able to address quickly, effectively and immediately any problems which may arise during that period of time.

I believe it would be important for me to sit in the Orlando federal Courthouse and be present at the convention itself. Thus, I am arranging to have facilities available for me and my staff and I expect to put that in place long before the June date.

I was somewhat, I must confess, amused at the options offered to me. Those options, when one compares them with the experience that I have not always enjoyed in this case, certainly doesn't assure the kind of presence that may be needed.

Now, you're going to argue, Mr. Ferguson?

MR. FERGUSON: I am, your Honor.

THE COURT: Let me see if I can give you some guidance.

As I see it, the government's motion for a declaratory judgment is, in essence, an application for interpretation of paragraph 16, applications to the court; is that correct?

MR. FERGUSON: Your Honor, it's certainly correct that the government makes this application pursuant to paragraph 16 of the Consent Decree. We believe that the language on its face, of paragraph 16, really needs no interpretation, gives this court exclusive jurisdiction to decide precisely these kinds of applications that the parties may bring before it.

But we are, as your Honor has noted, moving under paragraph 16 of the Consent Decree, in addition to other sources of this court's power to decide the issue that we have brought before it.

THE COURT: More succinctly, what are you saying?

MR. FERGUSON: In terms of this court's jurisdiction, your Honor?

We believe that the court clearly has jurisdiction under paragraph 16 of the Consent Decree to rule on this application. That is what the government and the IBT agreed to in entering into the Consent Decree and that is what the court, on more than one occasion, has made clear, that this is the forum to which the parties should come in the event they have an application touching on the Consent Decree

that they would like to have the court decide.

In addition to paragraph 16 of the decree, this court has the authority under the All Writs Act, 28 USC, Section 1651(a), to issue such orders as are necessary to prevent the frustration of the implementation of the Consent Decree. This court has previously held that it has jurisdiction in this case under the All Writs Act to prevent the frustration of the implementation of the Consent Decree and the Second Circuit, as the court is aware, has affirmed that determination. So the All Writs Act provides another independent source of this court's jurisdiction to issue the relief that the government requests.

In addition, a third independent source is the RICO statute itself, under which

this action was filed. 18 USC, Section 1964(b) provides that in the case of a civil RICO action brought by the government, such as this one, the court, pending a final determination of the action, may make any orders that it considers appropriate and necessary in the exercise of its jurisdiction under the RICO statute.

THE COURT: And that is crucial to your argument?

MR. FERGUSON: That, your Honor, is one of the independent bases of this court's jurisdiction. Even if there were no such statute, however, the Consent Decree alone would give this court adequate jurisdiction.

And even if there were no Consent Decree, the All Writs Statute alone would give this court jurisdiction. Each of these sources of jurisdiction, the Consent

Decree, and All Writs Act, and RICO statute, provides an independent, separate basis of jurisdiction for this court.

THE COURT: Then why does the government not have to meet the criteria under declaratory judgment in the Second Circuit in the Kidder case?

MR. FERGUSON: Because this is not an independent act that the government is bringing. If the government did not have a pending RICO suit against the Teamsters Union, and were seeking this relief without the background of a prior litigation which has gone on since June of 1988, then it may well be that the government would be required to meet the declaratory judgment standards as set forth in 28 USC Section 2201.

THE COURT: You were asked to state how you would satisfy the criteria set forth in Kidder.

MR. FERGUSON: Assuming the criteria for declaratory judgment would apply here, and the government would have to satisfy them, the government believes there is a concrete controversy here and that is really the essence of what is required for a declaratory judgment. On the one hand, the Consent Decree clearly provides that the future practices provision contained in paragraph 17 of the decree regulates the method by which amendment to the IBT constitution may be considered in areas that touch upon the Consent Decree. That's one half of the controversy.

The other half of the controversy, which provides us the concreteness and actuality of a controversy, is the facts

set forth in the government's moving papers, which the government believes indicate there is a serious risk that at the IBT convention in June of this year an attempt will be made to, in essence, ignore the future practices provision of the Consent Decree and attempt to revert to the method of election international union office that was in existence before the Consent Decree amended the IBT constitution.

So, on the one hand we have the clear command of the Consent Decree. On the other hand, we have evidence of a clear intention, at least on the part of some high-ranking members of the Teamsters Union to frustrate that Consent Decree.

We believe the controversy has been joined now and we believe that it is appropriate for the court to consider this

now because if the court does not consider it now and this issue is permitted to, in essence, fester until the convention itself, then we believe a serious risk is presented of throwing the convention into disarray and confusion and the risk is presented of the convention not being able to attend to all of the business it must attend to in the five-day period that has been set aside for it to do so.

So, we believe the controversy is here now and that this court should decide it now really for the benefit of not just the government but of the union itself. Because nothing could be worse in the government's view than to have this convention get underway and not be able to complete its business.

THE COURT: All right.

Now, I come to the next issue.

The government argues - and if you think I have misstated in any way, call it to my attention -- that the court need not make the standard findings before entering this injunction, that the need to make these findings have never been questioned in the numerous preliminary injunctions entered in the course of this case. Does that state your argument correctly?

MR. FERGUSON: Your Honor, it is our position that the government is not seeking a preliminary injunction here. We are simply seeking relief under the Consent Decree.

THE COURT: More in the nature of a stay?

MR. FERGUSON: We are seeking two things. I think your Honor stated it

correctly the first time. We are seeking an interpretation, a confirmation of what the Consent Decree provides on the one hand and on the other hand we are also seeking an injunction flowing out of an interpretation that would prevent the IBT from taking any action that is really contrary to the agreement it signed.

But in terms of the findings that the court must make in order to support the relief the government seeks, all the court must find is that the government's interpretation of the Consent Decree is the correct one.

Once the court has found that, then the court is free in the course of and for the purpose of implementing the Consent Decree to give the government the injunctive relief that it seeks.

The preliminary injunction standards simply do not obtain here. We are not looking forward to some sort of trial on the merits, so that preliminary injunction law and this circuit's test are really completely irrelevant to this particular application.

This particular application is no different in kind as far as the court's jurisdiction is concerned than the initial applications made at the very beginning of this case which dealt with matters as mundane as office space for the court officers.

It is the precise function and purpose of paragraph 16 to allow the parties to come to the court with any application that they believe is necessary in order for the Consent Decree to be implemented according to its terms and that's really all the government is doing here.

THE COURT: Now, succinctly, the question I asked: Is the government's argument that the issuance of this injunction would not implicate any statutes or doctrines other than interpretations of relevant provisions of the Consent Decree 9, 12, 16 and 17, because the injunction would only bind the IBT to seek government approval of any substitute election procedure should the convention not approve the Consent Decree's constitutional change: Is the question too verbal.

MR. FERGUSON: I believe I understand it, your Honor.

The court, should it grant an injunction against the IBT, will have to find that such an injunction is necessary for the adequate implementation of the Consent Decree.

Because it is an injunction that the court would be issuing, the issuance of that injunction would be subject to review, as with any injunction, on an abuse of discretion standard. Considerations that the court would take into account in deciding whether to grant the injunction would be considerations that it would take into account in deciding to grant any other kind of injunction, mainly, whether equity, which clearly applies here, allows such an injunction.

THE COURT: Have you dealt with the language I've used, namely, implication, at all? Have you answered that? Will the injunction implicate any statutes or doctrines other than interpretation et cetera, et cetera, et cetera?

MR. FERGUSON: The only doctrine I believe that would be implicated, other

than what is in the Consent Decree itself, would be the doctrine that an equitable remedy, such as an injunction, must be supported by adequate, equitable considerations and we believe that we have me that test here, because what is precisely required, and that really there is no other remedy for, is an injunction. There's no other remedy that will really do the job here.

THE COURT: Will implicate any statutes?

MR. FERGUSON: If your Honor were to ground an injunction on, for instance, the All Writs Act, obviously, it would implicate the All Writs Act.

But if your Honor were simply to ground the issuance of an injunction on the Consent Decree it would implicate no statute.

THE COURT: Now, this court has issued a number of injunctions, is that correct?

MR. FERGUSON: That is correct.

THE COURT: Does this prayer for an injunction, as you have described it, differ from any of the other injunctions or is it similar, all or in part?

MR. FERGUSON: I believe, your Honor, this is the first time that the government has sought the issuance of an injunction on the strength of the consent order provision alone. However, that is clearly permitted by paragraph 16 of the consent order.

But it is not the first time that the government has come before the court under the All Writs Act seeking an injunction and there, as the court held in its All Writs Act opinion preliminary injunction law was simply inapplicable because the government

was not seeking a preliminary injunction, it was seeking a simple injunction.

And the standards that apply to the court's issuance of such an injunction is whether it's an appropriate exercise of the court's jurisdiction in a continuing case, such as this one.

And that would be a similar analysis that would take place here, if the court were to ground its decision in whole or in part on the All Writs Act.

THE COURT: There was a time when Mr. Grady appeared before Senator Nunn's committee and there was some dialogue and ensued between them. You know what I'm talking about?

MR. FERGUSON: I do, your Honor.

THE COURT: And I think you have included transcript of that in your papers.

MR. FERGUSON: That's correct, we included excerpts from it.

THE COURT: What did you think the outcome of that dialogue means in terms of what is here before us today?

MR. FERGUSON: Well, the government believes that the dialogue between Mr. Grady and Senator Nunn --

THE COURT: Under oath.

MR. FERGUSON: Under oath.

-- is emblematic of the approach that the IBT has taken to this case from the very moment the Consent Decree was entered.

We believe the IBT has always sought to leave open the notion that in the event the delegates to the convention vote their disapproval of the Consent Decree, at that time the IBT would be free to revert to its prior method of electing officers, which was at the convention itself.

This is a consistent position taken by the IBT in its papers in this court and in the Second Circuit, with statements such as the Consent Decree is nothing more than an act of faith between the parties, with statements that the Consent Decree amendments are subject to the approval of the convention delegates. That simply is not what the Consent Decree says or means. But it has always been the IBT's position in this litigation, the government believes, to keep that issue alive and to create enough doubt and confusion among the membership that when the time comes at the convention it will be possible for the IBT to claim that the delegates' disapproval of the Consent Decree allows it to go back to its old ways.

And it was precisely the function of the future practices provision to prevent that from happening.

The essence I guess of the government's argument here is that the IBT's litigation position has, from day one of the post-decree period, ignored the existence of the future practices provision and not just the IBT's litigation position, as the government's papers showed, this is not simply a hypothetical concern of the government.

As IBT official Jack Yager, who at one time was sitting provisionally on the general executive board, testified in a sworn deposition before the independent administrator that there have been plans at the highest echelon of this union to do precisely that, that is, to go to the convention and in the event that the

delegates disapprove the Consent Decree to dispense with the rank and file election in December.

And it is that clear concern of the government that brings it here today. This is not just a matter of Yager's testimony. It is Mr. Mathis, the number two official in the union, who told the assembled delegates of the Eastern Conference of Teamsters last year in his view it's completely up to the convention delegates to determine what goes into the IBT constitution. That simply once again ignores the future practices provision of the decree and it is because the government fears, and with reason supported by evidence, that an attempt will be made at the convention to bypass the rank and file elections set for December that we come here today.

THE COURT: Will you succinctly state what precise remedy you seek and then I'm going to follow up with the question: What harm or prejudice do you perceive in the event I do not grant your application for relief?

MR. FERGUSON: The precise relief we seek is an order that would do two things: First, to declare that the function of the nominating convention that is scheduled for this June cannot be changed by anyone in the absence of compliance with the future practices provisions, which as your Honor knows requires prior approval of the government or this court for any changes that might be made in the areas covered by the decree. That's the first thing, an order simply declaring that that is what the Consent Decree means.

The second thing we seek is an injunction that would enjoin the IBT, acting as the representative of its members, its officers and its affiliates from taking any action that would change the function of that nominating convention --

THE COURT: How would changing the function of that nominating committee bring irreparable damage and harm to the government?

MR. FERGUSON: It would bring irreparable harm to the government by dispensing with a rank and file election that the parties agreed to and that this court ordered in the Consent Decree. Because if the June nominating convention is turned into an electing convention, then there will be nothing left for anyone to do in December.

THE COURT: You mean it will become cut and dried and, in effect, end up in a manner speaking as a plebiscite.

MR. FERGUSON: It will be cut and dried and the decision as to who will run this union will be made by the delegates rather than by the rank and file, which is what the parties agreed to.

THE COURT: All right.

It's your turn, Mr. Grady.

MR. MAAS: Your Honor, my name is Brian Maas.

THE COURT: Wait a minute. I got confused when I have a Jack-In-The-Box, people jumping up. Who is going to argue?

MR. MAAS: I am going to be introducing Mr. Pierce who is not a member of this court.

THE COURT: Don't ambush me and don't surprise me. If you want to do something,

let me know what you want to do instead of popping up. I see Mr. Grady here. I know him. He is counsel and I expect, unless I'm led to believe otherwise, that you have a different thought about it.

MR. GRADY: Thank you, your Honor. I apologize to your Honor. Attorney Rudolph Pierce, I believe he has filed the necessary papers as substitution of counsel for Brendan Sullivan.

THE COURT: There have been a few efforts about filing irrelevant, inappropriate applications for substitution of counsel. I have had the waste of time of having to send these papers back repeatedly and I would suggest in the future that local counsel pay close attention not only to the rules of this court but to the Federal Rules of Civil Procedure.

I gather that you are admitted to practice in this court and I gather you looked at the petition which you filed with this court when you asked for admission. You pledged under oath that you were familiar with the rules of the court, that you were familiar with the canons of ethics, that you were familiar with the Federal Rules of Civil Procedure, et cetera. In the future I don't want any messy papers and I won't tolerate it. That puts the facts on the record.

MR. GRADY: Your Honor, with the court's permission, attorney Rudolph Pierce will represent the International Brotherhood of Teamsters at the hearing today and at all hearings, your Honor.

THE COURT: When you say all future, you mean for all practical purposes you're sitting on the sidelines?

MR. GRADY: Yes, your Honor. But very close to the sidelines, your Honor.

THE COURT: That's a position I find it very difficult to envision you in.

MR. GRADY: Mr. Pierce I believe can bring to this court the competence and clarity necessary.

THE COURT: Have you had an opportunity to familiarize yourself sufficiently with the history of this case and the many gyrations it has taken, counsel?

MR. PIERCE: I think I've read 15 or 16 or 17 opinions published by this court. I've read a number of the transcripts, including the transcript that relates specifically the issuance or acceptance by this court of the Consent Decree.

THE COURT: You've heard the questions that I have specifically directed to the government.

It is now your turn to deal with those arguments and to persuade me that the relief which they seek is unwarranted. Your chance now is to tell me, one, do you oppose this application for interpretation of specific provision of the Consent Decree, which has been stated by counsel that this is not the injunction which is usually sought when there is a case involved.

Do you understand that? -

MR. PIERCE: I do.

THE COURT: All right. I'm ready.

MR. PIERCE: Fundamentally, the reason we oppose it, your Honor, because the Consent Decree, it seems to me, is clear and it does not stand for or say what Mr. Ferguson says it says.

To make this point, in a case which Mr. Ferguson cited in his papers called New

York Association of Regarded Children vs. Carey, the court says on page 37: Consent judgment is no mere contract, even though reference to contract principles may be useful, we may look at the circumstances surrounding the order and the context in which the parties were operating.

Now, what we said in our memorandum is --

THE COURT: Will you identify this citation with particularity?

MR. PIERCE: Yes, sir.

It is 596 F2d., page 27. It's the Second Circuit. I'm reading from page 37.

The reason I started there, your Honor, is because in the papers and in the transcript of the proceedings which occurred when the court accepted the Consent Decree --

THE COURT: Do you have a copy of that?

MR. PIERCE: Of the transcript?

THE COURT: Yes.

MR. PIERCE: I do. I cited it as an attachment to my papers.

THE COURT: Mr. Ferguson, do you happen to have a copy?

MR. FERGUSON: Your Honor, I don't have the precise transcript with me. I think the salient portions of it are cited in the IBT's opposing papers at page 3.

THE COURT: All right.

MR. PIERCE: In the transcript, your Honor, you stated to the parties that there seems to be some confusion with respect to paragraph 12 in that it seems to say that certain things are amended and it seems to say that the rank and file must vote on the amendments.

And then the discussion occurred. Finally, you concluded that the parties recess and should go outside and seek to clarify that provision.

And when the parties returned I think it was the Assistant United States Attorney reported to the court that the parties clarified that provision by paragraphs 9 A and B of the Consent Decree.

Paragraphs 9 A and 9 B clearly indicate I think or at least certainly it's clearly implicit that if the rank and file voted or the delegates voted not to accept the election provisions which are set out in paragraph 9, that the U.S. Attorney has the remedies which are specified. That was the agreement and that was the representation that was made to the court by the Assistant United states Attorney.

Now, all I've said here is we have not asked for anything with respect to Consent Decree. I agree with Mr. Ferguson and I certainly agree with the court that the basic text which is at issue here is the interpretation of the Consent Decree. All I've said, consistent with the opinion of this court expressed in the IBT case and elsewhere, the document has to be read by its four corners and how one could read this document without saying, as the Consent Decree specifically says, that the IBT retains the right to vote and the document specifically references the Landrum-Griffin free speech rights of the membership.

I would add one other point. It seems to be that Mr. Ferguson, in what he calls facts in his affidavit, failed to mention two I think very important facts. The

first is that the delegates who are going to vote at the IBT convention are delegates who were elected pursuant to the procedures instituted by the elections officers insofar as I understand. And I heard the representatives of the elections officer, when we appeared before Judge McKenna in another matter, stated that some 60 percent of the delegate elections were contested and some in excess of 50 percent of those elections had occurred, if I understood it, and were being counted. There isn't any allegation here that I have seen. Mr. Ferguson's papers that indicates in any way that the IBT has done anything to interfere with the implementation of the first stage of the election process.

So that if one looks at the facts -- the facts to which Mr. Ferguson refers is that there are some people in the IBT who

were of the opinion that the rank and file reserved the right in the Consent Decree to vote on the procedures. It seems to me that opinion is fully consistent with the express language which appears in the Consent Decree and, with respect to the statutes the Consent Decree refers, it says specifically that at the IBT 1991 International Convention the delegates shall be presented with these aforesaid amendments for vote, providing further that nothing herein shall be deemed or interpreted or applied to abridge the Landrum-Griffin's free speech right of any IBT officer, delegate or member, including the parties here to.

So that I think that language is clear that the parties have a right to express their opinion with respect to the election

and it's certainly clear that the delegates have a right to vote.

And paragraph 9 B is clear that, if the government does not like the outcome of the vote, the remedies are specific as to what they can do. And since your Honor has said you were going to sit in Orlando, it seems to me it even made the governmental position even weaker. They have immediate access, if they don't like the outcome, to the court.

THE COURT: Is this a good time for me to ask you the following question: I don't find that the IBT has specifically disputed the factual record presented by the government that there are plans to circumvent the direct election provisions by arranging to vote out the Consent Decree's constitutional change. And then I would follow it up succinctly to ask you

and to give me a very clear answer: Does the IBT dispute that some members of the GEB intend to do what the government alleged? Is that true?

MR. PIERCE: Let me answer your first question about what we disputed, if I understood that to be your first question.

THE COURT: Is my question clear?

MR. PIERCE: I thought the first question is did we dispute the allegation made by the United States that we're going -- that an effort was underway to vote out the procedures.

THE COURT: Will you answer my second question?

MR. PIERCE: If you're asking me, sir, if whether there are certain members on the general executive board who say hold the opinion that they are going to vote out the election, I cannot say that I have spoken

to every member of the executive board so that I know that position.

THE COURT: That doesn't give me much help. So I'll make my own finding on that, since I don't have a clear-cut answer, yes or no.

MR. PIERCE: I don't know that every individual or I'm not going to represent to the court that I know what every individual is --

THE COURT: Would you care to come to the point on this issue, Mr. Grady?

MR. GRADY: If I may, your Honor, I'm not aware of any single or combination of people who have, in effect, formed a political position that is going to be ante-adoption of the Consent Decree.

THE COURT: That's about as helpful as taking a shower with one' clothes on.

Can I get assurance from you that this will not happen?

MR. GRADY: Their secret intentions I am not aware of. Their express, explicit statements, I would be aware of if they appeared in the press or if they were made a general executive board meeting or if the general precedent was told by them. I am not aware of any of those public kind of statements that have been made. Their secret intentions I don't know of, of course.

MR. PIERCE: Your Honor, I was trying to point out in Exhibit B to our papers an article written by Mr. McCarthy, the last two paragraphs of which I think come directly to the point at least with respect to Mr. McCarthy's position. This was published in February of 1991. It states: On another matter, I reiterate to the

membership, as I testified before the United States Senate, that I intend to do everything in my power to support the provision of the consent order at the 1991 convention.

That was the point I thought that was responsive to your question.

THE COURT: Now, do you wish to address the government's argument on injunctive relief?

MR. PIERCE: Yes, I do, your Honor.

To being with, I think that the regular standards of Rule 65 apply, although they are emanating from a different document. That is to say we're looking at the interpretation. The court has to look at the interpretation and conclude, considering the language of the Consent Decree, whether the standards are applicable. My view here is if one looks

at the specific order, as Mr. Ferguson asked for, if I reason back from the order past the standard, his order is: Issue an order saying the function of the convention cannot be changed without court approval.

Well, your Honor, so far as we read the document, the document says at the convention the delegates can vote. I don't see what change that the government is asking for. I think this request isn't specific enough.

If what Mr. Ferguson seems to be saying is that the court should decide now that if the delegates to the convention vote down the amendments, what actions could be taken or what the procedure will be thereafter, I have these problems. First, I think that violates a specific statute.

THE COURT: Is it fair to say that your are willing to have this court, in this

context, interpret the constitution on this point?

MR. PIERCE: Your Honor, we've never challenged the jurisdiction of the court. We have not challenged the jurisdiction of the court with respect to the interpretation --

THE COURT: Perhaps my question is less articulate than I would wish it to be.

The language used for the relief sought here is declaratory judgment. The government has argued that that's what it seems and I have said isn't that in the nature of an application for interpretation. And then they have gone on further, in response to my more pointed question, to establish the fact that even pursuant to the criteria laid out in Kidder Peabody, in a recent Second Circuit case, they have alleged that they even meet that

criteria, if they had to meet it. I thought you said earlier that you agreed that this is in effect, an application or clarification and for interpretation of the constitution. Isn't that what I thought you said at one point?

MR. PIERCE: I thought that was responsive to your question and I do believe --

THE COURT: Do you agree that perhaps it's desirable and may be very helpful for both parties here to have some understanding in advance of the convention in June of this court's interpretation?

MR. PIERCE: No. I do not agree with the statement.

THE COURT: I thought you would say that.

MR. PIERCE: And I don't agree with that statement because I don't think it's necessary.

THE COURT: Whether it's necessary or not, it's always good to have a package of Band-Aids, isn't it?

MR. PIERCE: Your Honor, I think the agreement makes it clear that the Band-Aids exist --

THE COURT: I don't think so. I don't think it's as easy as you would like to have me believe.

MR. PIERCE: As I understand it, your Honor, all the government has to do is make application to the court by the conclusion -- by not later than the conclusion of the IBT convention.

THE COURT: I think this is an appropriate application for interpretation at the very least. I think even if I were

to say to the government: Have you met the criteria laid forth in Kidder-Peabody? My finding would be yes, they have. So, I don't think that's a problem that bothers me further.

I have heard all the arguments. Is there anything further that you wish to address? Anything that I may have omitted?

MR. PIERCE: Not if you have already reached a conclusion, your Honor, I have nothing else to say.

MR. FERGUSON: May I respond, your Honor?

THE COURT: Yes.

MR. FERGUSON: Mr. Pierce's argument on behalf of the IBT was really a microcosm of exactly what I was speaking about earlier, which is the IBT's studied indifference and ignorance of the future practices provision of the decree. There was not a single time

during that presentation in which Mr. Pierce even mentioned the words future practices provision or paragraph 17.

We agree with the IBT that the question of what the consent order means has to be looked at by reading the consent order.

Where we part company with the IBT is in our belief that one has to read the entire consent order.

When the parties came before the court on I believe it was March 13, 1989, and the court identified certain difficulties it had with the Consent Decree as drafted at that point, this court sent the parties --

THE COURT: Two years ago?

MR. FERGUSON: Over two years ago now, your Honor.

This court sent the parties back to clarify the meaning of the Consent Decree. This court considered the further

submissions and drafting of the parties on this issue and entered the decree. The only conclusion one can draw from that is that this court believed that those clarifications had been provided.

It is quite simple to read the entire Consent Decree with perfect consistency. No inconsistency between any of the provisions, no confusion, as Mr. Pierce seems to indicate there may be in the government's interpretation. But even if there were confusion in how the decree should be interpreted, that is precisely why we are here, to ask the court to dispel that confusion.

As I said before, the sequence of events is clear. The Consent Decree has been in effect since March 14, 1989. The Consent Decree has been part of the IBT constitution since March 14, 1989. Part of

the IBT constitution, therefore, is paragraph 17 of the Consent Decree, which provides specifically that in the event the IBT wishes to make any changes in the areas covered by the decree it must seek the prior approval of either the government or this court.

When the convention occurs, the delegates, pursuant to paragraph 9 B and paragraph 12 D of the decree, will have the right to vote their approval or disapproval of those Consent Decree amendments.

In the event that they vote to disapprove those amendments, matters do not, as the IBT contends, revert to the way they used to be. Rather, pursuant to the future practices provision, if the IBT, through its delegates has any alternatives to the electoral procedures required by the decree that it would like to suggest, the

government will be on hand to deal with those suggestions.

But all the government seeks here is to hold the IBT to the bargain it struck two years ago, that is, to give the government prior notice of any constitutional changes that are contemplated either by the IBT general executive board between conventions or by the delegates at the convention.

I would like to touch briefly on the notion that the government is squelching anyone's free speech rights here.

THE COURT: Well, that's been raised.

MR. FERGUSON: That's been raised certainly.

THE COURT: On more than one occasion.

MR. FERGUSON: There is certainly no truth to that.

THE COURT: Also freedom of association. That's been raised.

MR. FERGUSON: The delegates at this convention will be able to associate, assemble, vote, discuss, debate, however robustly on any matters properly before the convention under the IBT's own rules for conventions. They will be free to vote on any matters properly before the convention. They will be free to vote on the Consent Decree. They will be free to exercise to the fullest their LMRDA rights and any rights they have under law.

THE COURT: And come to this court. As I said, and will reiterate, I will be sitting in Orlando. I will also be physically present with my the staff at the convention itself.

MR. FERGUSON: Any delegate feeling aggrieved at the convention will be able to have access to the court. The government doesn't seek to squelch or suppress anyone

free speech rights. The government seeks only the enforcement of the agreement to which the IBT agreed two years ago. That is the only reason we are here. We believe that this issue should be addressed now in order to allay any doubt about the matter in the months running unto the convention.

THE COURT: I have even pressed for an answer I think. Assuming that this is an application for any injunction in the customary conventional sense, I have even digressed from that and ask you to state for the record whether you can allege and demonstrate what irreparable harm you would suffer and I think you have done that.

Do you care to amplify the statement you have made.

MR. FERGUSON: The irreparable harm the government will suffer is the denial of the agreement, of the effects and fruits of the

agreement which it obtained two years ago. The irreparable harm will occur if this convention does not go forward as contemplated by the parties and if, rather, it turns into something else and that something else eliminates the rank and file election in December of this year that is the linchpin, the touchstone, the most important single part of this decree. That is irreparable harm.

Indeed, I thought it was quite telling that the IBT cannot give this court any assurance whatsoever that what the government has laid out in its papers will not occur at the convention. That speaks volumes about the need for the court to decide this matter right now before the convention is thrown into disarray.

Even if your Honor is there on the scene to deal with the situation, it is

much better for all concerned, and for the implementation of the Consent Decree, and ultimately for the membership in terms of protecting their right to the rank and file election December, that these matters be dealt with up front so that no one is under any illusions at the convention that they can try to make an end-run around the Consent Decree by the maneuver that the government has described in its moving papers.

THE COURT: Perhaps I ought to lend some thought about that.

As I said, I will be physically present at the convention and I don't think you have any doubt, either side, that if there was any need to apply right there and then for a stay of any conduct that was considered in contravention of this Consent Decree, that I could immediately order a

stay and call this convention, with respect to any particular item, to a complete halt and immediately repair to the courthouse for argument.

MR. FERGUSON: And that is exactly right, your Honor.

THE COURT: And I think it's important for everybody to bear that in mind.

MR. FERGUSON: I'm sure the court has that power and it would not hesitate to exercise that power.

I am equally sure that if the IBT were to be the subject of such an order by the court the first place it would go would be the United States Court of Appeals for the Second Circuit.

THE COURT: Then I think under those circumstances that I have no need or occasion to exercise a stay by dealing with the problem right here and now, which gives

everybody not only clarification, but gives them an opportunity to take the elevator up from here to the 17th floor.

MR. FERGUSON: Your Honor, the government can't emphasize enough that this convention takes place over a very concentrated five-day period and it is very difficult to obtain meaningful appellate review in five days. That is why the government is coming to this court now to get this court's determination now on the proper interpretation of the Consent Decree, to get appropriate injunctive relief to effectuate that interpretation and if anyone is dissatisfied with the court's ruling we have between now and the beginning of convention in late June to make our arguments to the Second Circuit.

THE COURT: Doesn't that make sense? Certainly it's much easier if I view the

government's argument favorably and decide that and give you your opportunity to go to the 17th floor, rather than wait possibly for a time when I may be constrained to grant a stay. Whatever appeal would follow from that would certainly not be -- is that now the Fifth Circuit or the Eleventh Circuit?

MR. FERGUSON: That would be the Eleventh Circuit.

THE COURT: It's the Eleventh now, as a result of the split-off. Certainty, you're not going to be entertained by the Eleventh Circuit, but you would have to come back to New York in June.

So, don't you think, under all the circumstances, that this is the time to come to a decision? Think about it, and if you really think hard about it, you might even say, yes, judge, I think we want you

to rule on this matter now. Think about it. Think of the alternative. I might decide to say I'm going to wait, particularly in view of a comment made in the Grady-Nunn dialogue about alternatives. You remember that language?

MR. FERGUSON: If your Honor is referring to paragraph 9 B, where the government reserves certain rights in the event of a vote of disapproval, that's correct. It gives the government the right to I believe seek any action from the court, including contempt, reopening the litigation or enforcement of the order. And really all we're seeking right now is enforcement of the order as it's written.

We're seeking that relief now because we believe the alternative should be unacceptable to all parties and that is the alternative of throwing this convention

into chaos so that it might not be able to complete its business within the time allotted. There are going to be delegates coming to this convention from all over the country and Canada and the facility is only available for a limited period of time. It is simply imperative that by Friday, June 28, this convention have completed its business and if a maneuver of the kind described in the government's papers is even -- even gets somewhat off the ground, that possess a risk that the convention will not be able to complete its business and that is why it's appropriate for this court to decide the matter now.

THE COURT: What do you think will happen at the convention if the delegates vote against the Consent Decree?

MR. FERGUSON: Well, it's possible to imagine a number of scenarios. Here is one that troubles the government perhaps the most.

THE COURT: Perhaps unpredictable.

MR. FERGUSON: It will be an unpredictable event, no question about it.

One thing that can be predicted is that although we now have a substantial amount of competition, even on the general executive board, we have two competing slates. In essence, it is entirely foreseeable that as the convention approaches and the members of the general executive board become more keenly aware of the competition both between them and with outsider slates that they are going to have to face in the run up to the December election, that the general executive board members may, in keeping with timeless

Teamster tradition, cut some sort of deal so that the Teamster members of the general executive board will be able to have a united front at the convention.

The delegates who will have gone to the convention -- many of those delegates, at least, will be supporters or pledged or committed in some sense to the members of the general executive board who have declared for election here. If a united general executive board can persuade the delegates to vote against the Consent Decree, the next thing that can occur is simply to revert to the old method of electing the general executive board, that is, by the votes of the assembled delegates, thereby dispensing with the December election. That is an entirely foreseeable scenario.

It is precisely because of these kinds of concerns, which are not hypothetical, which have actually been voiced by none other than, for instance, the number two person in the union. It is precisely because there is a movement of sorts out there to scuttle the December election that the government is coming here now.

Mr. Mathis, right now, just to pick one example, is part of a slate that declares itself, at least to the membership, to be in favor of a rank and file election in December. But when Mr. Mathis' audience is different, i.e., the delegates to the eastern conference convention, his message is always somewhat different. He says he doesn't see anything wrong with the old method of proceeding. It's precisely that kind of double talk that causes the government a great deal of concern. It

causes the government to want to come to the court now to get this matter clarified.

MR. PIERCE: Your Honor, may I be heard?

I suppose that Mr. Ferguson can hypothesize anything he wants. But there is, it seems to me, particularly since we're talking about elections, the Consent Decree sets up an apparatus and one of the persons appointed under the Consent Decree is the elections officer and before we go off and listen to Mr. Ferguson hypothesize about what the possibilities are, it seems to me that the elections officer who has had his ear to the ground, has been instituting election procedures, who has a staff, who has been dealing with 600 and some odd locals, we ought to have something here from the elections officer or somebody who has been instituting part of the electoral process, which in some respects

supports some of these hypotheses which Ferguson is alleging.

I could allege different hypotheses of what is going to occur. One thing is very clear, that the very delegates that Mr. Ferguson is using as the very basis of his hypothesis were delegates which were elected pursuant to a procedure established under the Consent Decree and one assumes that if democracy is to mean anything in this union that the most significant election has to be the election of the delegates. After all, in the final analysis, the slate or slates or persons that the rank and file get to vote on under the Consent Decree's conceived procedures are the candidates or slates which were chosen by the delegates who were elected pursuant to the procedures instituted by the elections officer.

Nothing has been said here about this first stage of the procedure and nothing has been offered here from the election office in support of the various hypotheses which have been offered here by Mr. Ferguson.

At a minimum, if Mr. Ferguson claims we ought to stay on the four squares of the Consent Decree, and we ought to interpret it and follow it, it seems to me at a minimum we would have to have something here from the very officer --

THE COURT: You may not see the something here. I disagree with you. I see something here. It may not be enough. But I can't accept your high-flying statement. Perhaps you don't see anything at all. I do. I'm not saying that I see enough yet. That requires further study. I'm going to order each of you to submit

proposed findings of facts and conclusions of law in one week and not one minute later than that.

MR. PIERCE: May I say one thing, your Honor.

THE COURT: You may say more than one thing.

MR. PIERCE: I did not say there was nothing here. I tried to be careful to say that I make no statements respecting what individuals will vote at the convention. I did say here that I pointed out a specific statement made by Mr. McCarthy and Mr. Grady stated that he was not aware of any concerted effort. But I'm not going to go on record --

THE COURT: He did not more than say that. That statement what is long, prolix and very nedgy.

If you are going to characterize his statement, I suggest, in all fairness, that you do it rulsomely. If find absolutely nothing in that response that gives me any comfort or assurance whatsoever.

MR. PIERCE: I do want to make it clear that I am not [ ].

THE COURT: You were at least frank and said you don't want to take a position about that because you don't know and I think that's probably correct. You don't know.

Do you want any further response?

MR. FERGUSON: Two points, your Honor. First on the matter that the delegates who were going to be at the convention are elected pursuant to the Consent Decree, that of course is true. That is a matter of some importance and, you know, we

fervently hope that the delegates at the convention will approve the Consent Decree.

However, as this court is aware, a democracy in the Teamsters Union is not something that happens with the snap of one's fingers and it is going to be quite awhile before I think this union is fully restored to a democratic footing.

One further point on that: The Function of the delegates -- and I would disagree with counsel with respect to his assertion that the delegate elections are the most important here. The function of the delegates is the limited one of nominating candidates for international union office at the convention. That nomination requires only a very low threshold of five percent of the delegates. The main event here is the rank and file election in December and it is the

desire to preserve the vitality and the existence of that main event that the government is seeking this relief here.

Secondly, with respect to the election officer, I can represent to the court that an application by the government has the full support of the election officer.

THE COURT: I have asked you to submit findings of facts and conclusions of law. Perhaps in the serene environment of your office, if you look at all the options and alternatives and if you look at all that may happen at the convention itself, you may decide that it is in the best interests for all concerned to get this matter resolved now, here, in the Souther District, rather than in the Eleventh Circuit.

So, I want you all to prepare yourselves for my presence in Orlando.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

v. 88 Civ. 4486(DNE)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, et al.,

Defendants.

----------x

March 14, 1989

10:30 a.m.

Before:

HON. DAVID N. EDELSTEIN,

District Judge

- - -

(In the robing room)

THE COURT: There are a number of issues that are unclear on the face of the proposed settlement, stipulation and order. I touched on it briefly, but now I am going to deal with it in depth.

Do you have the proposed order and settlement with you?

MR. MASTRO: Yes, your Honor.

THE COURT: Do you, too, Mr. Rakoff?

MR. RAKOFF: Yes, your Honor.

THE COURT: Section F of the agreement, Paragraph 12, --

SOUTHERN DISTRICT REPORTERS 212-791-1020

Tell me when you have it.

MR. MASTRO: I have it, your Honor.

THE COURT: -- provides for the appointment of three officers. The agreement leaves the time frame for the proposal of officers undefined. Perhaps

this is desirable in order to eliminate time pressures in the selection process. On the other hand, it might be useful to provide an outside date for the proposal of names, tempered with a provision for an extension of that time for good cause shown. It is clear, until those officers are in place to that extent, this decree is not in place.

It also leaves unclear the Court's responsibility with respect to the appointment of these officers. Does the Court have an obligation to independently scrutinize the proposed officers, or is my role limited to ratifying the decision of the parties; in other words, rubber stamping them? This would not be acceptable to me.

Section K, Paragraph 16 and Section M, Paragraph 18, seem to contain

some ambiguity with respect to the Court's jurisdiction, which, if not clarified, might create some problems in the future. I mentioned that yesterday when I spoke to you on the telephone.

Paragraph 16 appears to give jurisdiction to this Court with respect to "any future applications by the administrator or the parties".

Paragraph 18 provides that the IBT may seek a determination from any court of competent jurisdiction as to whether future changes in the IBT constitution are in harmony with this agreement.

Are you with me?

MR. MASTRO: Yes, your Honor.

THE COURT: On Page 15, the last paragraph contains a confusing clause. It provides that the provisions of this agreement amending the IBT constitution as

to election procedures, "shall be presented," to the 1991 international convention for a vote. However, Section D, the preface to the election reforms provisions provides that "The IBT constitution shall be deemed amended, and is hereby amended, to provide for the following new election procedures." These two provisions seem inconsistent on their face.

Finally, the next one is simple. There is the question of a prior orders entered in this case, and particularly the status quo order, first incorporated in the order to show cause of June 28, 1988, and extended after the first hearing. Although it would appear that the settlement order would supersede all prior orders, perhaps an explicit statement to that effect would be appropriate, particularly in light of

the open question regarding reimbursement for individual officers attorney's fees.

MR. MASTRO: Would you want us to comment at this point?

THE COURT: I have no priority. I want to hear from both of you. Until these clarifications are explained, I will not sign this order.

MR. RAKOFF: Your Honor, one of these I think we can deal with very quickly, because we had previously discussed it, and I'm sure we can put in some language, if necessary.

THE COURT: Keep your voice up.

MR. RAKOFF: That's the one regarding the appointments of the three officers, both in terms of time and your Honor's scrutiny. Certainly, we will need some time, and I agree with your Honor, that obviously this whole operation doesn't

take effect until the officers are presented to your Honor and approved by your Honor.

It would be -- we had talked yesterday of an initial period of three weeks, during which we would get together an agreed upon list, one for each of the three positions, and then present it for your Honor's scrutiny. While I haven't discussed it with Mr. Mastro, I feel sure that everyone here agrees that your Honor would have to scrutinize the proposed person and be satisfied --

THE COURT: I don't think that I want to be put in the position of merely having a veto power, which may have to be repeated again and again, although it is probably unlikely. I am not going to accept that. If I am the approving officer, I lend my integrity to the one

that is eventually placed in the position of the supervisory position. My integrity is associated with that appointment. And since I have my integrity at stake to whatever instant may occur, a veto power is not going to be satisfactory.

I will give you another alternative. Rather than be placed in this position, if we can't arrive at some understanding, I don't want the approval of power at all. In other words, if the Attorney General is going to make these appointments, that's his responsibility; it's his integrity that's behind it, not mine.

MR. RAKOFF: That would also be acceptable to us, your Honor. Either of those alternatives in satisfactory to the IBT.

THE COURT: I am perfectly willing to sit down with the Attorney General's representative and discuss names. Clearly, I would expect a profile. I would like to know the background, I would like to know what their record is in public life. I would like to know that they are beyond criticism, that they are "purer than thou."

And so I will not sign this order until these clarifications are made.

MR. MASTRO: Your Honor, the primary purpose behind this provision was to ensure that both the union and the government, hopefully, would reach an understanding or an agreement on the people who would be serving in these very important roles, because that would facilitate a future course of conduct. And I think that would be in everyone's interest.

THE COURT: What about the Court?

MR. MASTRO: So we had intended to meet and propose candidates to the Court.

THE COURT: But you have a tripartite situation.

MR. MASTRO: Absolutely, your Honor. Absolutely. And from the government's prospective, we wanted whomever was proposed to the Court to be someone that the Court also would want.

THE COURT: That doesn't exist. All I am given is the dubious power of a veto. And what does that mean?

MR. RAKOFF: Well, maybe, your Honor, you're right, and the best thing is not to involve the Court in this.

THE COURT: Pardon me?

MR. RAKOFF: Perhaps, then, the best thing is not to involve the Court, and to simply --

THE COURT: That's up to you.

MR. MASTRO: Your Honor, that is something I would have to discuss with the U.S. Attorney and the Attorney General. Obviously, your Honor is going to retain jurisdiction over this case and entertain future applications of the court officer.

THE COURT: Speaking off the top of my head, I think it is extremely important for the Attorney General to recognize -- and I'm sure he will -- that this is a tripartite situation. This Court has very definite responsibilities. The union may come back to him. The supervisors may come back to him. And I'm just not going to be responsible for anybody who is appointed, merely because I veto any name.

Now, I suppose you mean, in any event, that a number of names would be submitted for each position.

MR. MASTRO: Perhaps that, your Honor. And I was just about to suggest that. We could agree upon a number of individuals.

MR. RAKOFF: No, your Honor, we had discussed this previously. I don't want to bore your Honor with the background.

THE COURT: Bore me.

MR. RAKOFF: I think from the union's standpoint, we feel it's important that we work with the government to the point that we come up for each position with a name that we both feel total confidence in.

THE COURT: I will not accept that under any circumstances. Not one name.

MR. RAKOFF: It seems to me, your Honor, that if the alternative that you proposed, of, in effect, making this just something that the Attorney General takes upon himself, then the ground rules that we had worked out would be unacceptable.

THE COURT: Clearly, we cannot resolve that now. And clearly that must be resolved at the earliest possible time.

MR. MASTRO: We agree, your Honor. We're eager to resolve that as quickly as possible. I would be prepared to first discuss with the U.S. Attorney and the Attorney General what your Honor has suggested about the Attorney General. But also, I would be prepared to talk to the IBT in more detail about the possibility of us agreeing on more than one candidate who would be acceptable to both parties to each

position, so your Honor would therefore have a number of candidates.

THE COURT: Well, let me talk off the top of my head, even about the most unlikely things.

From time to time, this union and other unions have been criticized for sweetheartening. And by submitting one name, you immediately place yourself at some risk.

MR. MASTRO: I appreciate that, your Honor. And the government would not agree to a name that it was not satisfied with.

THE COURT: I know you're "purer than thou". I stand firm on that, which is the subject that you must discuss back home.

MR. MASTRO: Absolutely, your Honor.

THE COURT: All right. Now we address some of the other problems.

MR. MASTRO: I think the other one is easily remedied: the final point your Honor raised about the prior orders.

THE COURT: That's easy.

MR. MASTRO: That's easy. I don't think there is any misunderstanding. This supersedes.

MR. GRADY: That's a housekeeping matter.

THE COURT: That's in an excess of caution, but I don't want that to be raised at a future time: "What about my fees? It's cost us an enormous amount of money." I don't want to have those problems.

MR. MASTRO: Absolutely, your Honor.

THE COURT: I want it out of the picture.

MR. MASTRO: Absolutely, your Honor.

That brings us to the second point you raised, which is what you perceive as an inconsistency in the two jurisdictional provisions, Paragraph 16 and Paragraph 18, that applications to the Court, this Court, future applications by the administrator or the parties be made to this Court, and then Paragraph 18 about changes in the constitution of the IBT that would be inconsistent with this order.

THE COURT: Why would you go to any other court?

MR. MASTRO: Your Honor, this was not something that the government wrote in that regard. We don't believe there is any other court of competent jurisdiction than your Honor.

MR. GRADY: May I, your Honor?

THE COURT: What?

MR. GRADY: May I speak?

THE COURT: Always. Of course.

MR. GRADY: Thank you, your Honor.

From my perception, this Court eventually, in a matter of several years, will enter a judgment dismissing the case with prejudice. It was our perception that the clause, Paragraph 18, would at that point be effective, that is, this Court is out of the case.

Now, in the year 2,015, if we want to change something, then it was felt that first, who do we ask. The government said, "We don't want you willy-nilly changing things." Who do you ask? And we talked about asking the Attorney General, and we said, "Well, just ask the plaintiff," and we're going to ask the plaintiff, the

United States of America. And then the question is: Where should we ask? Well, we said, "At that point in time, perhaps the proper place is where we're located and where the United States of America is located, which is the District of Columbia."

THE COURT: United States of America is everywhere.

MR. GRADY: I agree with your Honor. That's why we said any court of competent jurisdiction, meaning if there was a dispute that, let's say, was peculiar to the state of California, whatever -- you know, we can't conceive of what we're talking about, so it's difficult to give an example. But if it was something that regionally lends itself to the court in California, it would be California; if it was something in New York, it would be New York; if it was Washington, it would be

Washington. We sort of left it deliberately open, so that wherever the lawyers were at that time, could, with the government, go --

I'm sorry, your Honor.

THE COURT: Too open-ended, subject of too much confusion, and, as it reads now, a clear inconsistency.

MR. GRADY: Your Honor, if I may just take a moment.

THE COURT: Take as much time as you want.

MR. GRADY: Thank you, your Honor.

This agreement was ratified and approved by the general executive board at a meeting held Sunday evening that began approximately at six o'clock and ended approximately midnight.

Every member had a copy of this, you know, pretty close to what you have in

front of you, your Honor. And I went through every paragraph literally a line at a time, explaining what it means, the intent and answering questions.

This point that your Honor is on was, indeed, not felt as a housekeeping item, but was felt as a substantive item. That is, as you know, our general executive board is distributed throughout the United States. A regional, let's say, pride emerged, where the members were saying: "Why should this case always stay in New York? It doesn't make sense." And when we proposed this "any court of competent jurisdiction," that satisfied those concerns.

Now, I'm placed in a very difficult position, your Honor, because the board members, they've gone back to Seattle, Texas, wherever they came from,

Florida, and my instructions were to tell the government we have an agreement. But the agreement is the one I discussed with them. If we now start making substantive changes in it, I'm placed in the position where it may be that I have no authority to agree to them, because they're going to say to me --

THE COURT: Why should I defer to that problem, instead of having it clarified:

MR. GRADY: I think I can clarify things, your Honor. And I have that much authority. But if the change moves from clarification and fine tuning to a substantive change, then my authority ceases and we don't have an agreement. And I hate --

Your Honor, I have been working on this and with Mr. Mastro since December

23rd. It was our first meeting. And we've spent numerous -- I don't want to count them -- hours negotiating this, and it's very carefully crafted, your Honor. And I certainly, with all respect, recognize the Court's role, and I don't mean to at all suggest that the Court doesn't have full authority to exercise its jurisdiction here.

But I just respectfully want to point out that once we cross the -- let's say, the line of matters that are procedural, clarification or technical, typographical into substantive areas, then my, let's say, ability to --

THE COURT: Well, so be it. I don't understand your logic.

First of all, it is about as settled as anything can be in the law: When there is a consent degree or any structured settlement pursuant to a

permanent injunction, or whatever, that a court retains jurisdiction for all purposes.

Here, I have jurisdiction for certain purposes, and then suddenly we find the clause which certainly is confusing.

MR. GRADY: Could I make this suggestion, your Honor: I would have no trouble with a clarification that says that the "any court of competent jurisdiction" only has application when this Court has entered a judgment dismissing the case.

THE COURT: And also some language to the effect that this is not an inconsistent position. I will accept that clarification.

MR. GRADY: Thank you, your Honor. That, I have the authority to do.

THE COURT: I will accept that clarification.

MR. MASTRO: And, obviously, continues to be a court of competent jurisdiction for any such application, the government's view, the only court of competent jurisdiction.

MR. GRADY: We don't dispute that. Of course, this Court continues.

THE COURT: All right. We expect some clarification.

MR. MASTRO: Thank you, your Honor.

The final point your Honor raised --

THE COURT: The very important point.

MR. MASTRO: -- about the 1991 election, your Honor.

THE COURT: Right, on Page 15.

MR. MASTRO: Yes. Your Honor, that's not the only point in the document --

THE COURT: Not the only?

MR. MASTRO: That's not the only point in the document at which the 1991 convention is expected to take a vote on certain of the aspects and provisions of this proposal. In fact, we would hope that a vote would be taken on all provisions here.

The document makes clear that the constitution of the IBT is deemed amended immediately. In the government's view, that is a permanent amendment and not subject to change, absent the provision we were just talking about, first coming to the government for change, and if the government says no, then going to this Court or another court of competent jurisdiction.

However, your Honor, there have been legal issues raised in this case.

Your Honor saw it when certain locals made motions, even though they didn't have standing, about the order your Honor issued on documents production. Certain local officials or local unions may in the future raise legal challenges about the amendment of an international constitution in a manner that was by court order rather than pursuant to the constitution which calls for ratification at a convention.

We believe, the government believes, your Honor, there is no question that the amendments can be ordered by this Court pursuant to a consent decree, and that they are automatically in effect. But if down the road there is a challenge by a local official or a local union, ratification at the convention would eliminate any legal issue at all.

THE COURT: Clarifying language is all I expect you to do, so that it is understandable, so that it is clear, so that the public out there reading it will know what we are talking about.

MR. GRADY: That's satisfactory, your Honor.

THE COURT: And that is very important.

MR. MASTRO: We'll do that, your Honor.

THE COURT: Now, what do you propose to do today? Do you propose to summarize the decree? What do you propose to do?

MR. MASTRO: I'm prepared to do that, your Honor.

THE COURT: Well, tell me what you want to do.

MR. MASTRO: Whey don't we do this. The decree won't be final today until the parties have had a chance to go back and make these clarifications that your Honor has requested. I'm prepared to go into court and summarize it now, although I think both parties at this point have had opportunities to summarize. I think a better plan is for us to spend the time right now to work through these few problems and come back to your Honor this afternoon, if your Honor will see us.

MR. RAKOFF: I would agree with that

MR. GRADY: Yes.

THE COURT: Say that again.

MR. MASTRO: I think a better plan -- Of course, we have a full courtroom now. A better plan perhaps would be a very brief session here, where it is explained

that you've raised some questions with the parties, and the parties are going to address them as quickly as possible and get back to you. And hopefully, we would be able to come back this afternoon with the clarifications your Honor has requested.

THE COURT: And bring this crowd back?

MR. MASTRO: Yes.

THE COURT: All right.

MR. MASTRO: They're all very interested in seeing us apparently, your Honor.

I think these matters we can resolve today, your Honor, and have final language in a signed document for you this afternoon.

And I think, under the circumstances, rather than going back out

and going over all of these in detail, simply get the clarification.

MR. GRADY: Or the alternative, your Honor, is, you know, not to go out at all, and do it all at once, hopefully, this afternoon.

THE COURT: You mean adjourn until this afternoon?

MR. GRADY: Yes your Honor.

MR. MASTRO: We could do that. But adjourning right now --

THE COURT: They were very angry at me yesterday.

MR. MASTRO: They want to see you, your Honor.

THE COURT: Now we have a real problem. An attorney by the name of Robert S. Smith of the Paul, Weiss firm, who represents the Democratic Union of What?

MR. MASTRO: Teamsters for a Democratic Union, your Honor.

THE COURT: All right. He wants to be heard in open court. He wants to make a statement. Frankly, I don't see that he has any standing whatsoever.

MR. RAKOFF: I think all parties agree.

MR. MASTRO: I think that's correct, your Honor.

MR. GRADY: That's right.

THE COURT: They never pressed their motion to intervene as amici. There is nothing before this Court to suggest they have any standing.

What do you think about that?

MR. MASTRO: Your Honor, I agree that they don't have standing at this point. I think we all have an interest in trying, and have tried, to resolve our

problems amicably, and to have the lawyer for a dissident group within the union getting up in court and complaining is probably not in anyone's interest here.

Perhaps if we took a brief recess, I can speak to Mr. Smith, and maybe I can resolve his situation. I think he wants to be able to submit something to your Honor about the proposal.

THE COURT: That's not the end of the story. Jack just handed me a note. The ACLU is here and made the same request.

THE CLERK: I think they're co-counsel with Paul, Weiss.

MR. RAKOFF: I don't think they've ever entered an appearance.

MR. MASTRO: I understand, your Honor, although the government didn't give them a cop of the settlement, --

And I'm not suggesting that Mr. Rakoff or Mr. Grady did, either.

MR. RAKOFF: We did not.

THE COURT: -- ACLU and Paul, Weiss have a copy of the settlement agreement.

I suggest to your Honor that perhaps we take a brief recess here, and if your Honor would be amenable, if they had some sort of submission to make to your Honor to consider, that they do it by the end of the day. And that way, they wouldn't have to speak in court.

THE COURT: But they want to speak in open court.

MR. MASTRO: Perhaps I could talk them out of it.

THE COURT: They want to play to the gallery.

MR. MASTRO: I understand, your Honor. Perhaps if I suggested this to them, your Honor, they would be willing to make a submission to your Honor by the end of the day, and there wouldn't be a need for open court.

THE COURT: You agree with that?

MR. RAKOFF: I think, myself, your Honor, that your Honor has full authority to simply say they have no standing whatsoever at this stage.

THE COURT: Query: Do they have any standing?

MR. RAKOFF: I don't believe so.

THE COURT: I have already told the ACLU that on another occasion.

Do they have any standing?

MR. RAKOFF: They do not.

THE COURT: The answer is no. I think that's clear.

MR. RAKOFF: Then I think --

THE COURT: What do you want me to do? Do you want me to call these people in and hear what they have to say? Do you think they're going to be satisfied with the submission?

MR. MASTRO: Your Honor --

THE COURT: Do you want to go out and talk to both of them at this point?

MR. MASTRO: Why don't we take a brief recess, and we'll be happy to talk with them and see what they're interested in saying to the Court. And then I can report back to the Court.

THE COURT: Shall I take that recess now?

MR. MASTRO: I'm prepared to take that recess now. I agree that they have no standing. But I've always tried to work

with everyone here to resolve situations amicably.

THE COURT: Is it possible that they're going to rise in open court and ask to be heard and place me in the position of saying no, or place you in the position by my turning to you if I want to finesse it and say, "What do you have to say?"

MR. MASTRO: I will say they have no standing, your Honor.

MR. GRADY: To address the Court.

MR. MASTRO: To address the Court.

MR. RAKOFF: And certainly, I will say the same.

THE COURT: Well, tell me what strategy. Do you want to go out and talk to them?

MR. MASTRO: I would prefer the opportunity to have a brief recess, and I will speak to them.

THE COURT: Take the brief recess now before we start the proceeding.

THE CLERK: Mr. Mastro, so you'll be private, I'll open up the witness room for you, and you can have your discussions in there.

MR. GRADY: I just direct your Honor's attention to Paragraph 22 of the proposed order, your Honor, and it specifically provides that it doesn't give any rights to any other entity, other than the parties; not only judicially, but substantively, they have no standing.

MR. RAKOFF: Thank you, your Honor.

THE COURT: You'd better do that before you have an outburst.

(Recess)

THE COURT: All right.

MR. MASTRO: I've spoken to Mr. Smith. Mr. Smith would like to submit some

sort of letter to the Court, not necessarily expressing all of his views, but getting some of his thoughts to the Court. I've explained to him that we would take the position, if we had to in open court, there is no standing, and I believe the IBT would say the same. I think he wants to submit a letter to your Honor, and I think that will resolve our current situation without need of --

THE COURT: Will he be satisfied with that?

MR. MASTRO: I think he will be satisfied with that without need of anything in court today.

THE COURT: Today.

MR. MASTRO: Today. I'm not sure if he'll be satisfied with that in the future. But I think that may solve the

immediate question of what he intends to do today.

He's waiting outside, and perhaps he could be heard on this to this limited extent, about putting in a letter.

MR. RAKOFF: Your Honor, I'm opposed --

THE COURT: Before you do that, is it fair to assume that what he wants to be heard about is a challenge to some portions of the agreement?

MR. MASTRO: It is fair that he has questions about a couple of the provisions in the proposed agreement, or I think it's also fair to assume, from my discussions with him, that it may or may not be something, these concerns, that would rise to the level of attempts to litigate. So I think --

THE COURT: But you would have to respond to those letters, both of you.

MR. RAKOFF: Your Honor, I'm opposed to having him even put in a letter. I think that you open a Pandora's box once you give this fellow standing in any sense to in effect intervene, even if it's initially in this extremely limited form.

I've known Bob Smith for many years, and he's an extremely effective advocate. If you give him an inch, he'll take a mile, and I don't blame him for doing what he's supposed to do for his clients. But I don't think it's in the Court's interest or the parties' interest opening that door.

MR. MASTRO: I have no intention of giving him standing, and I made that clear.

MR. RAKOFF: If we have a letter and responding letter, now you're not --

MR. MASTRO: I was not intending to respond to the letter.

THE COURT: You say you have no intention to respond?

MR. MASTRO: I was not intending to respond.

THE COURT: Where do you leave me? What do I do?

MR. MASTRO: I would be happy to respond to it orally before your Honor, but I wasn't intending in writing.

THE COURT: Next step. What are the ACLU?

MR. MASTRO: I believe that Mr. Smith is here on behalf of both. The ACLU is joining with the Paul, Weiss firm. But Mr. Smith is the lead voice for the TDU people, I believe.

MR. RAKOFF: I don't think the ACLU seeks to come in as the ACLU.

THE COURT: They have no more standing than the dissident group, no more standing than that.

MR. RAKOFF: Right.

THE COURT: I've got the ball. It's my decision, isn't it?

MR. MASTRO: It is, your Honor.

THE COURT: Well, my view is that if we're going to give them an opportunity to submit a letter, which is extremely open-ended, let them make their comments in open court, let it be on the record. Whether I consider it or not is a matter of my option. I don't have an open letter that I have to address in some way, because once they send a letter, I remind you gentlemen it has to be filed with the Clerk

of the Court. So if there is any heat, that's it.

(Discussion off the record)

THE COURT: What do we do now?

First, I'm going to apologize to all and sundry for the delays that have been caused. I'm going to tell them that I have discerned some ambiguities that have been brought to the attention of the government, Mr. Rakoff and Mr. Grady, and that they are coming back to me with clarifications, and we will reconvene again this afternoon.

MR. MASTRO: What time would you like to reconvene?

THE COURT: What time do you want? You're going to need some time. Can it be done today?

MR. RAKOFF: Yes.

MR. MASTRO: Yes, your Honor.

MR. RAKOFF: Four o'clock.

MR. MASTRO: Four o'clock would be fine.

You think we can do it by three?

MR. RAKOFF: I think so.

MR. MASTRO: Let's say for three.

THE COURT: Whatever you say.

MR. MASTRO: All right, your Honor, we'll aim for three.

Thank you.

(In open court)

THE COURT: Good morning, ladies and gentlemen.

ALL COUNSEL: Good morning, your Honor.

THE COURT: I want to note my apologies on the record for any inconvenience I've caused you by yesterday's delay and again today.

This Court needed time to study an important document, a consent decree proposal. The stipulation and order was submitted to me yesterday at five minutes of three. I concluded my review and study of that document at almost exactly five-thirty. My study revealed apparent ambiguities on matters of serious importance. Those matters were brought to the attention of counsel for the parties in the robing room this morning. They need time to provide this Court with a clarification that is essential before I feel justified in signing and approving the decree.

Accordingly, they have requested a recess until four o'clock this afternoon --

Three o'clock is it? Three o'clock.

MR. MASTRO: Three o'clock will be fine.

MR. RAKOFF: Three o'clock.

MR. GRADY: Yes, your Honor.

THE COURT: Until three o'clock this afternoon.

In the interests of my being able to make a mature decision, that request is granted.

Thus, we will reconvene again at three o'clock. And I hope that the forthcoming clarification will resolve some of the problems that I perceived.

Again, I'm sorry. Please accept my apologies. We appreciate your indulgence.

MR. Smith: Your Honor, --

THE COURT: No.

THE CLERK: Please be seated, sir.

MR. SMITH: May I request to be heard, your Honor?

THE COURT: No.

THE CLERK: Please be seated, sir.

THE COURT: An adjournment for good and sufficient reason has been requested, and I have granted it. There is no need for any further comment on that subject.

I'm sorry again.

I'll see you again in the robing room.

(In the robing room)

THE COURT: Was that Mr. Smith who stood up?

MR. MASTRO: Yes, your Honor.

(Mr. Smith entered the robing room)

THE COURT: Have a seat, Mr. Smith.

MR. SMITH: Thank you.

THE COURT: I understand you wish to be heard.

MR. SMITH: Yes, sir.

THE COURT: Just a moment.

MR. SMITH: Sorry, sir.

THE COURT: It is clear that you have no standing.

MR. SMITH: I respectfully disagree, your Honor.

THE COURT: Well, why didn't you pursue your application to intervene as a friend of the court? If you wanted standing, you should have proceeded in conformity with the rules and given your opposing numbers an opportunity to oppose or to agree and eventually to give me the opportunity to say yea or nay. You did neither.

MR. SMITH: May I respond to your Honor's question?

THE COURT: Before you do, is it true that you did neither.

MR. SMITH: I don't believe so, your Honor. I would not characterize it in that way.

THE COURT: You what?

MR. SMITH: I would not characterize it in that way. I believe I have proceeded properly, and I would be happy to be heard on that point.

THE COURT: Let me hear you.

MR. SMITH: We had made a motion to intervene as party defendant. We made it, I believe in January. At the suggestion of the government, we agreed to adjourn the motion. The motion has never been withdrawn. It is adjourned to a date to be fixed, I believe you said on ten days' written notice. The motion remains pending.

I think that it provides an appropriate vehicle for the Court to rule on whether I have standing to be heard, and to determine the merits of any objections I may have.

I want to make very clear that I'm not saying to your Honor or to Mr. Mastro that I object to the settlement. The only purpose for which I wish to be heard at the moment is to say that we need a little more time to focus on the settlement which we saw for the first time yesterday afternoon. The agreement we made to adjourn the motion was to give -- to defer the question of our right to intervene to the relief stage of the case, which I'm sure everyone then anticipated was several months away. Indeed I know, because I know from my contacts with counsel, that an early settlement was not at that time

expected. The settlement and then the relief stage has come much sooner than expected.

I would certainly be happy to accelerate the motion I've made to intervene on any schedule that is reasonable and is convenient for the Court and counsel. But I do not believe I've waived my right to intervene. On the merits, on the merits of my standing, I think I have a very strong case. Indeed, to me, the point that may be more in question is whether I will want to object to the settlement. I do not mean to suggest that I want to object to the settlement. I only mean to suggest that I need time to make that decision.

I do think that my standing to object to it and if I should decide, if my client does decide, that it wants to object

to it, is very strong, because we represent some 10,000 members of the organization in question, and I do believe that in a situation like this, where there is, to say the least, grave doubt about the faithfulness of the representation of the union leadership, that an organization representing that number of members should be permitted to intervene.

So I feel comfortable, your Honor, in arguing to you that I have standing to be heard. I feel much less certain and I do not mean to suggest that I will want to be heard in opposition of the settlement. At the moment, my clients, through me, are marking a plea, your Honor, that we need a little longer to look at the rather complicated details of this document that we saw late yesterday afternoon.

THE COURT: What is your position on the ACLU?

MR. SMITH: The ACLU are my co-counsel, your Honor.

THE COURT: I know.

MR. MASTRO: I believe I speak for them in what I said.

THE COURT: What standing do they have?

MR. SMITH: The ACLU has no position but as counsel to the TDU. That's the only role I know.

MR. MASTRO: I believe that's accurate as to the ACLU, your Honor, yes.

MR. RAKOFF: Yes, your Honor, as you know, we and the government both believe that Mr. Smith has and the TDU has no standing here whatsoever, and we indeed have filed motions in opposition to his motion, which we were not called upon to do

because he put it on hold. We would have said that it was untimely, even at the time it was filed.

THE COURT: Do you wish to give Mr. Smith an adjournment to study this decree?

MR. RAKOFF: I think it can only be contrary to the interests of everyone concerned, including the public, to have that happen at this stage.

MR. MASTRO: Your Honor, the government does not want an adjournment.

THE COURT: You say that you need more time?

MR. SMITH: Yes, sir.

THE COURT: Why do you need more time than was afforded to me? I didn't see that consent decree until, as I said for the record, five minutes to three. And you

have many resources that, unfortunately, are not available to me.

What is the size of your small firm?

MR. SMITH: My firm is very large, Judge, and it is not my firm I'm making a plea for. The size of my firm is three-hundred-odd lawyers. The people who will be studying the decree are not the three-hundred-odd lawyers in my firm, but number of people -- and I cannot tell you how many -- connected with the TDU who have worked with the TDU, since we had no idea that this particular event was coming, happen at this moment to be scattered in various parts of the country.

The reason it is important for them to study the decree -- and I cannot say, with all respect that they may not be able to give it a different kind of

evaluation than any counsel, or even your Honor, is in a position to give it -- is that they are the people who deal day to day with the problems relating to how you can assure that union democracy will function, that insurgent candidates will have a fair chance, and that an election which seems on it face to be free will not be dominated by the leadership of the union.

I do not -- I know I'm repeating myself, but I want to make it clear. I do not mean to suggest that the settlement we have seen does not achieve the goals that it purports to achieve. I may well be persuaded that it -- my client, which is more important, may well be persuaded that it does achieve those goals. But I do think we need to show it to, and to have some fairly extended discussion with, the people who are actually going to be

campaigning in these elections, will be planning the campaigns, who will have to make the -- who will have to live for many years with the decree, which was not available to us until yesterday afternoon. And I don't think it's unreasonable to ask for a period of a several days for them to review it.

MR. MASTRO: Your Honor, obviously --

THE COURT: Keep your voice up.

MR. MASTRO: Obviously, from the government's perspective, the sooner we can get entry of a decree, the sooner we can get the appointment of an administrator and these other officers, the better for cleaning up this union. So we would want no delay in that process. And we're not prepared to agree to any delay in that process.

MR. RAKOFF: Your Honor, it should also be noted that this lawsuit, which called for remedies that relate to the very matters Mr. Smith has mentioned, was filed in June. And his group did not choose to even move to intervene until January. And I think that casts it in a clearer light how much interest they really felt they had and how much weight should be accorded the time they're asking for now.

THE COURT: This group represents what percentage of the membership?

MR. RAKOFF: The total membership is about 1.6 million. This group represents 10,000. And we actually believe that's an inflated figure. But that's their claim. And my arithmetic is not very good, but that is a very small percentage, your Honor.

MR. SMITH: It's our position, your Honor, that the actual membership figures don't reflect the degree of support we have in the union. In fact, we have been able -- in fact, when the TDU has been able to conduct a fair fight in the union, it's done quite well.

THE COURT: You oppose the adjournment?

MR. MASTRO: The government opposes an adjournment, your Honor.

MR. RAKOFF: We oppose the adjournment.

THE COURT: Well, it seems to me that you should have pressed this motion sooner. You had plenty of time to do that. You didn't. And from my point of vantage, I don't think you have any standing whatsoever, .none.

MR. SMITH: I understand your Honor's ruling.

THE COURT: That's it.

MR. RAKOFF: Thank you, your Honor.

MR. GRADY: Thank you, your Honor.

(Recess)

- - -

A F T E R N O O N S E S S I O N

3:30 p.m.

(In the robing room)

THE COURT: Will you now address my concerns for the record.

MR. MASTRO: Yes, your Honor.

THE COURT: Incidentally, you asked whether you may release the transcript, is that correct, because you have been asked to furnish those to reporters?

THE REPORTER: Attorneys.

THE COURT: All right. I see no objection.

MR. MASTRO: The government has no objection, your Honor.

MR. RAKOFF: No objection.

THE COURT: All right.

MR. MASTRO: Your Honor raised four points. The parties have met, and I believe have resolved all four. We will present to your Honor our suggestions for your review.

The first point your Honor raised was about the appointment of these officers and your Honor's role in that process.

Referring your Honor to Page 7.

THE COURT: Page second?

MR. MASTRO: Page 7, your Honor, of the document, Paragraph 12.

THE COURT: Page 7, 12.

MR. MASTRO: There have been two new sentences added to make clear that there will be proposed to the Court at least two persons for each post.

THE COURT: Where you're dealing with my particular concerns, please read it into the record.

MR. MASTRO: Certainly.

The paragraph now reads: "The Court shall appoint three officers -- an Independent Administrator, an Investigations Officer and an Election Officer -- to be identified and proposed by the government and the union defendants, to oversee certain operations of the IBT as described herein. The parties shall jointly propose to the Court at least two persons for each of these three positions. Such proposal shall be presented to the Court within four weeks of the date of

entry of this order, except that for good cause shown, such period may be extended by the Court."

That's the end of the quotation from the document.

Those latter two sentences, your Honor, were added in the hopes of addressing your Honor's concerns.

THE COURT: Well, the Court shall appoint three officers. Then we follow that up by who these three are to be identified and proposed by the government and the union defendants.

That means that the Court is bound to appoint three officers from the proposals submitted by IBT and the government.

MR. MASTRO: It is the intention of this consent order, your Honor, that there be three officers appointed, yes.

One is an administrator, one in investigations officer, one is an elections officer.

THE COURT: Proposed to the Court by the government and IBT.

MR. MASTRO: Together, yes, jointly.

THE COURT: That leaves me where? I have to accept those after they have been identified?

MR. MASTRO: Your Honor, we will propose, as the next sentence attempts to address, at least two persons for each post for your Honor's review, so there will be at least two candidates proposed for each of the three positions.

THE COURT: What if the Court doesn't believe that they can perform their duties satisfactorily?

MR. MASTRO: Then the parties will, as I understand it, propose additional candidates to your Honor.

MR. GRADY: We'll keep giving you more until you're satisfied.

THE COURT: Will you agree that before the proposals are made, that the Court will be consulted? This has an advantage that may not be obvious. But from the standpoint of protocol, it is much better to deal with a problem unofficially, rather than to put the Court in a position where he vetoes or has to make a comment which is pejorative.

MR. MASTRO: I understand, your Honor. The government would be happy to do that.

MR: RAKOFF: We would, also, your Honor. Although I would want it understood that would be at a meeting that both

parties, or all parties, or all parties are present at.

THE COURT: Let me see if I can be more articulate, and this will be deemed incorporated by reference.

Do I understand that you will agree that when you have the list that you wish to submit of proposed officers whom you have identified, that before anything final is done, you will have an informal discussion with me and that should I wish to propose a name, that you will also consider that?

MR. MASTRO: Your Honor, that's fine by the government.

MR. RAKOFF: That's fine with us, your Honor.

THE COURT: That is deemed incorporated by reference in this record.

Next.

MR. MASTRO: The second point that your Honor raised this morning had to do with jurisdictional aspects of the proposed order. And I now refer your Honor to Page 26 of the document under "Scope of the Order." Excuse me, your honor. Under "Future Practices."

THE COURT: Page 26, second full paragraph?

MR. MASTRO: No, your Honor.

THE COURT; "Scope" --

MR. MASTRO: It's just above "Scope of the Order," your Honor.

I will read the relevant sentence, starting at the top of Page 26.

"If the plaintiff then objects to the proposed changes as inconsistent with the terms and objectives of this order, the change shall not occur; provided, however that the IBT shall then have the right to

seek a determination from this Court, or, after the entry of judgment dismissing this action, from this Court or any other federal court of competent jurisdiction, as to whether the proposed change is consistent with the terms and objectives set forth herein."

THE COURT: That satisfies me.

MR. MASTRO: Than you, your Honor.

The third area that your Honor had a question about was the provision in the document that a constitutional change was deemed amended, but also later reference to the fact that there would be a vote at the 1991 convention.

That appears in more than one spot in this document, your Honor. It appears in several spots. Every provision in the document is deemed automatically amended in the IBT constitution as of the date of

entry of the Court order. But I think we have clarified this, and I will refer your Honor to the specific page, Page 5. Paragraphs 9(a) and (b), I think, explain fully the intent of the parties, and I will read them into the record.

"9(a) The IBT constitution shall be deemed and hereby is amended to incorporate and conform with all of the terms set forth in this order."

Subparagraph (b). "By no later than the conclusion of the IBT convention to be held in 1991, the IBT shall have formally amended the IBT constitution to incorporate and conform with all of the terms set forth in this order by presenting said terms to the delegates for a vote. If the IBT has not formally so amended the IBT constitution by that date, the government retains the right to seek any appropriate

action, including enforcement of this order, contempt or re-opening this litigation."

THE COURT: All right.

MR. MASTRO: Thank you, your Honor.

And as to the final point that your Honor raised about prior orders the Court had entered affecting these parties and their applicability at this point, I refer your Honor to Page 27 under the heading, "Limits of Order." The last sentence has been added, and I will read it into the record.

"As to the undersigned defendants hereto, this order supersedes the order of the court entered on June 28th, 1988, as thereafter extended."

THE COURT: Fine.

MR. MASTRO: Than you, your Honor.

MR. RAKOFF: I see on typographical error, your Honor.

THE COURT: Good.

MR. RAKOFF: I will correct it.

THE COURT; Where is it?

MR. RAKOFF: My recollection of my high school Latin is that supersede is actually spelled with an s-e-d-e, rather than c-e-d-e. So I will take care of that.

THE COURT: You are correct.

MR. MASTRO: Thank you, your Honor.

THE COURT: Are we ready?

MR. MASTRO: We are ready, your Honor.

THE COURT: All right. Now what procedure to you wish to follow?

MR. MASTRO: If your Honor is at this juncture prepared to enter the order, or to consider entering the order, I would propose that we meet in court, that the

government indicate on the record that the proposal is acceptable to the government, and briefly, very briefly, summarize its terms, and then ask the Court to enter the order.

THE COURT; Well, fine.

Now, will you also indicate for the record -- and since they're going to have the transcript, there is no harm in doing that -- that the clarifications that were discussed this morning, the points raised by the Court, have been clarified to the Court's satisfaction and are now part of the record, which are deemed incorporated by order of this Court in this record, and to be read and considered together with the formal consent order.

Does that meet with your approval?

MR. MASTRO: That will be fine, your Honor.

MR. RAKOFF: Yes, your Honor.

THE COURT: Then I will have some comments. I am going to talk about the nature of settlement. Since there may be some who are dissatisfied, I am going to go into a brief discussion about that.

You will recall that yesterday at the conference, the Attorney General observed immediate action offsets any flaws. And I want to address that for the moment. All right?

MR. GRADY: Thank you, your Honor. Appreciate it.

(Pause)

(In open court)

THE COURT; The Court recognizes Mr. Mastro.

MR. MASTRO: Thank you, your Honor.

THE COURT: And again, ladies and gentlemen, thank you very much for your patience.

MR. MASTRO: Your Honor, yesterday morning I reported to the Court that the International Brotherhood of Teamsters and the remaining union officer defendants had agreed to a settlement proposal in this action, and that the U.S. Attorney would be taking that proposal to the Attorney General.

Yesterday afternoon, the Attorney General also endorsed the proposal.

Your Honor acted expeditiously, reviewed the proposal, met with counsel this morning, and advised us of certain clarifications that needed to be made for a full understanding of the agreement. The parties met immediately thereafter, drafted clarifications, and have incorporated those

into the document and reviewed them with your Honor.

These clarifications are now a part of the record, transcript of these proceedings, which will be publicly available, and they are to be considered part of the proceedings in connection with this order.

To briefly summarize the major elements of the proposal, the settlement proposal involves the immediate appointment of an Administrator for the International Brotherhood of Teamsters, an Investigations Officer and an Elections Officer.

The Administrator is to have powers in the areas of imposing discipline and trusteeships, as well as certain review authority in the areas of expenditures, contracts and appointments. The Administrator's term is to extend for nine

months beyond the certification of the 1991 IBT election results.

The Investigations Officer will function as an investigator in discipline areas and trustee cases, and present evidence that the Investigations Officer collects.

And the Elections Officer shall supervise the IBT's 1991 elections, and the government, at its expense, can also have the Elections Officer supervise the 1996 elections.

In addition, the document includes reforms of the Teamsters' electoral process, including direct rank and file elections of all international union officers; involves a procedure for direct rank and file elections by secret ballot of any delegate to the teamsters' convention, all of whom will have to be directly

elected by secret ballot to become a delegate to the convention; and that convention candidates will be nominated for various international union posts, president, secretary-treasurer and sixteen vice-president slots; and following the convention, direct rank and file secret balloting for each office, with eleven of the sixteen vice-presidential spots being elected on a regional basis, five elected union wide, and, of course, the president and general secretary-treasurer elected unionwide.

And finally, after the 1991 convention, this proposal calls for the establishment for the Teamsters union of an independent review board, comprised of three individuals, one to be appointed by the Attorney General, one to be appointed

by the Teamsters union and the third to be appointed by the other two designees.

The board's responsibilities will be to investigate allegations of corruption, to make recommendations to appropriate Teamsters affiliates, and disciplining corruption, and then to review what action is taken for sufficiency and to take appropriate action when the board deems it necessary.

Those are the major elements of the proposal, your Honor. And at this time, the government requests that you Honor enter this order.

THE COURT: Mr. Rakoff.

MR. RAKOFF: Your Honor, the proposal the government has summarized, of course, supplemented by many other proposals of importance, not the least of which is the continuation in office of the

leadership of this union and other guarantees of the independence of this union, but I think the best evidence of this document is the document, itself, and we would join in the request that your Honor so order it.

THE COURT: Yesterday, the Attorney General observed immediate action offsets any flaws. This is a realism. In light of the prospect of a long and drawn out trial, with the clear prospect of appeals at the end of the trial, the end of this case would be many years away.

Let me take a brief moment to address the decree. Like any settlement, it was a negotiated one, requiring give and take.

It does not mean "you do as I say, and we'll compromise." Most lawyers are

wont to say a settlement is a good one when both sides are unhappy.

Now, I will dwell for a few moments on a bit of history.

The IBT has had a long and sordid career of corruption and involvement with criminal elements and corrupt practices. The IBT is the largest trade union in the world. It has enormous political, social and economic power. It is in place in every industry and in every segment of our society. It must be held to the highest degree of integrity and responsibility. It must be a union which truly belongs to the membership at large, and not to a few. It must be free to act honestly and in the best interests, not only of its membership, but of the nation, itself. Thus, it is clear that it must be free of any domination and influence by tainted sources.

This decree and its intent and spirit both must be considered together. It attempts to oversee the union to the extent stated in the decree, in the hope that the spirit and the intended purposes can be accomplished.

Thus, the supervisory provisions set forth in the decree, if effectively exercised, affords some hope that the union will become part of the mainstream of honest unionism. If this happens, it will be an enormous victory for the union and its membership, and the nation, as well.

The decree also provides for democratic elections. This is an enormous stride in the history of the IBT. Its vast power for good and for reform cannot be ignored. It is my hope that the Court and the supervisors will exercise their powers in pursuance of the agreement diligently

and rationally. It is my hope that this will be the beginning of a new era for the IBT. It is in the best interests, as I see it, for the IBT to write a bright page in its contemporary history.

Let us keep in mind and never forget, labor unions have played a pivotal role in 20th Century America's economic, social and political life. The right of workers freely to band together to protect and to advance their economic interests has become an integral part of our laws. Without labor unions that represent their interests, workers are left without a voice.

The International Brotherhood of Teamsters, as I said earlier, is the largest union in the world. Approximately 1.7 million men and women join under its rubric in order to be heard. Tragically, over the past four decades, a long shadow

has been cast over the leadership of the Teamsters union. Three of its previous four general presidents have been convicted of federal felonies in connection with their activities as union officials. The president immediately preceding the present one died months before he was to stand trial on federal racketeering charges for union-related activity.

In addition, dozens of other Teamster officials at various levels have served time in jail. Throughout this entire time period, allegations of ties between organized crime figures and Teamster officials have been abundant.

Beneath this web of convictions, allegations and innuendo, the members of the Teamsters have had a hard haul to pull. They are entitled to have their purported representatives speak with their

united voice. They should not have to question whether their union is betraying them, or whether the allegations of corruption and organized crime are true. They are entitled to a union that is democratically run, represents their interests above all, and does not compromise their rights due to outside criminal influences.

Today, the leaders of the International Brotherhood of Teamsters have rededicated themselves to the principle and spirit that guide labor unions in this country. They affirm that their union should be free from the influence of organized crime. In short, they pledge themselves to making the Teamsters union a democratic institution, where integrity and the benefit of the workers are the guide posts by which they will travel. The

leaders of this union have today done their members a great service.

The agreement ratified today should be viewed in the future in the context of the spirit in which it was executed. It is, after all, the members' union. They will have the right directly to elect their leaders, free from any influence except their own good conscience. To assist the union leadership in identifying corruption, independent officers and later an independent review board will be established.

In one sentence, this agreement is designed to ensure that the International Brotherhood of Teamsters and its 660 locals belong always to the 1.7 million men and women that comprise its heart and soul.

In this decree, I have been asked to play a continuing role, and significant

and serious responsibilities have been cast for me. I accept that responsibility. I shall dedicate myself to seeing the responsibilities that I have assumed will be carried out with conscience and dedication. I expect, and am confident that I will receive, cooperation to the fullest extent whenever necessary both from the government and the IBT.

Accordingly, the decree which they have submitted to me is approved. I will pen my signature, and it will be filed accordingly.

Is there anything further?

MR. MASTRO: No, your Honor. Thank you.

MR. RAKOFF: No, your Honor.

THE COURT: Thank you, ladies and gentlemen.

Supreme Court, U.S.
FILED
AUG 14 1991
OFFICE OF THE CLERK

(3)

No. 90-1904

In the Supreme Court of the United States

OCTOBER TERM, 1991

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the courts below correctly construed a consent decree settling the government's civil RICO action against the union to: (1) amend the union's constitution to provide for new election procedures; and (2) permit amendments to the union's constitution that are inconsistent with the terms and objectives of the consent decree only upon prior approval by the government or the district court.

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In the Supreme Court of the United States

OCTOBER TERM, 1991

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INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, PETITIONER

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The court of appeals' order (Pet. App. 1-4) is not reported. The district court's opinion and order entered on May 6, 1991 (Pet. App. 7-54), and the district court's order entered on May 7, 1991 (Pet. App. 5-6) are not yet reported.

JURISDICTION

The court of appeals' order was entered on June 7, 1991. The petition for a writ of certiorari was filed on June 13, 1991. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATEMENT

1. In June 1988, the United States filed this civil action under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 *et seq.*, against petitioner union (also referred to herein as IBT), petitioner's governing General Executive Board and its 18 members, and a number of alleged organized crime operatives. The complaint alleged that the IBT had long been under the control of organized crime, and sought equitable relief to rid the union of such control. Compl. 109-111. See also *United States* v. *IBT*, 931 F.2d 177, 180 (2d Cir. 1991).

In March 1989, on the eve of trial, the parties agreed to a consent decree, which the district court entered as an order of the court. Pet. App 55-107. The principal goal of the consent decree is to wrest the union from the influence of organized crime and return authority to the union members by, *inter alia*, establishing a new system of rank-and-file elections of IBT officers. Pet. App. 56-57, 64-65, 78-83. See *United States* v. *IBT*, 931 F.2d at 181. The consent decree requires three court-appointed officers to carry out the terms of the decree and monitor the union's activities.[1]

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[1] The three officers include an Independent Administrator, an Investigations Officer, and an Election Officer. Pet. App. 66. Among other powers, the administrator is vested with powers equivalent to the union's General President and General Executive Board to discipline corrupt officials and to appoint temporary trustees to run the affairs of affiliated entities. Pet. App. 67-68. The Investigator is empowered to bring disciplinary charges and, where appropriate, institute trusteeship proceedings. Pet. App. 68-72. The Election Officer supervises all phases of the electoral process. Pet. App. 82. With certain exceptions, the authority of the court-appointed officers will terminate when the union's 1991 elections are certified. Pet. App. 58-60.

The consent decree expressly states that "[t]he IBT Constitution shall be deemed amended, and is hereby amended, to provide for the following new election procedures." Pet. App. 78. Candidates for international union officer positions are to be nominated at the union convention by delegates chosen in rank-and-file elections conducted at the local union level. Pet. App. 78-79. After the candidates are nominated, the officers are to be elected by a direct rank-and-file, one-member/one-vote, secret ballot. Pet. App. 81.

The decree's election provisions additionally provide:

> At the IBT 1991 International Convention, the delegates shall be presented with the aforesaid amendments for vote; provided further that nothing herein shall be deemed or interpreted or applied to abridge the Landrum-Griffin free speech right of any IBT officer, delegate or member, including the parties hereto.

Pet. App. 83.

The decree, at para. D.9, also generally states:

> (a) The IBT Constitution shall be deemed and hereby is amended to incorporate and conform with all of the terms set forth in this order.
>
> (b) By no later than the conclusion of the IBT convention to be held in 1991, the IBT shall have formally amended the IBT Constitution to incorporate and conform with all of the terms set forth in this order by presenting said terms to the delegates for a vote. If the IBT has not formally so amended the IBT Constitution by that date, the Government retains the right to seek any appropriate action, including enforcement of this order, contempt or reopening this litigation.

Pet. App. 63-64.

Paragraph L.17 of the decree further declares that the "parties intend the provisions set forth herein to govern future IBT practices in those areas." Pet. App. 101. That paragraph requires the union to give the government prior written notice of any proposed changes to the consent decree provisions incorporated in the union's constitution. If the government objects to the proposed change as "inconsistent with the terms and objectives" of the consent decree, then "the change shall not occur." *Ibid.* The union may then seek a determination from the district court as to whether the proposed change is inconsistent with the terms and objectives of the consent decree. Pet. App. 101-102.

Finally, the consent decree provides that the district court shall have continuing jurisdiction over implementation of the decree and that the court shall enter final judgment upon satisfactory completion and implementation of the decree. Pet. App. 58.

2. The IBT International Convention was scheduled for June 24, 1991. Pursuant to the terms of the consent decree, delegates to the convention were to nominate the candidates who would be on the ballot for the December, 1991, rank-and-file election of union officers. Prior to the convention, the government learned that members of the IBT leadership were attempting to derail the rank-and-file election. These officials were orchestrating an effort to have the convention repudiate the consent decree's rank-and-file election procedure and replace it with an election of the union's executive officers by a vote of delegates at the convention itself. Pet. App. 10; C.A. App. 137, 144-150, 218-252, 254-262. To protect the rank-and-file elections provided for by the consent decree, the government sought a declaration from the district court that the consent decree's election procedures could not be altered except in accord with para. L.17

of the decree, entitled "Future Practices." Pet. App. 101. The government further sought an order enjoining the IBT's executive board, members, agents and affiliates from taking any action to alter the function of the nominating convention, except in compliance with the decree's future practices provision. Pet. App. 9-11.

3. On May 6, 1991, the district court issued an order granting the relief requested by the government.

As an initial matter, the district court rejected the union's argument that the government's allegations were too speculative. The court noted that the IBT's attorneys, including its General Counsel, refused to deny or dispute the government's allegations that IBT executives were planning to use the convention to avoid the rank-and-file elections required by the consent decree. Pet. App. 23-24.

The court held that the terms of the consent decree were expressly incorporated into the IBT constitution and could not be vetoed by the convention delegates. Pet. App. 27-28. The court explained that the decree's requirement of a convention vote on the decree was added only because of then-existing uncertainty about whether the General Executive Board could bind the IBT's affiliates and members to the constitutional changes made by the consent decree. Pet. App. 27. The district court determined that the clear intent of the parties was to amend the constitution forthwith to incorporate the decree and bind all subordinate entities. Pet. App. 27-32. The court further noted that, since entry of the consent decree, the court of appeals had firmly established that the General Executive Board did have authority to bind the IBT's members and affiliates. Pet. App. 32-39. The

court concluded that the convention vote on the decree thus "will now have no legal effect" and that "[n]o action by the IBT at the convention can undercut the provisions of this Consent Decree." Pet. App. 40.

Accordingly, the court issued a declaration that the electoral and disciplinary terms of the consent decree are part of the IBT constitution and are binding upon the IBT's subordinate entities, unless the decree's provisions are changed in accordance with para. L.17 of the decree. Pet. App. 53. Further, the court declared that the function of the 1991 IBT convention in nominating candidates for the December rank-and-file elections "may not be expanded, limited, altered, or otherwise changed in any way without full compliance with the provisions of ¶ L.17 of the Consent Decree." *Ibid.* Finally, the court enjoined the IBT and its subordinates from attempting to alter or circumvent the nominating function of the 1991 convention as delineated in the consent decree, unless their actions are authorized pursuant to para. L.17 of the decree. Pet. App. 53-54.

On May 7, 1991, the district court amended its May 6th order to include the sentence: "Nothing in this opinion shall be construed to alter the provisions of the Consent Decree that require the Consent Decree's amendments to be put to the convention delegates for a vote." Pet. App. 5-6.

4. The IBT filed an expedited appeal with the Second Circuit. On June 7, 1991, the Second Circuit issued an order affirming the district court's decision on the merits. Pet. App. 1-4.[2]

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[2] The June convention was held as scheduled. The consent decree's terms were presented to the delegates, who voted to reject them after extensive debate. See Proceedings, 24th Convention, IBT 172-199 (June 24, 1991).

5. On June 13, 1991, the IBT acting through its executive officers, filed the present petition for certiorari in this Court. On June 17, 1991, a group of elected convention delegates who had been denied permission to intervene in this action by the district court (Pet. App. 25-26), but had been permitted to intervene on appeal (Pet. App. 3-4), filed an application for an emergency stay with Justice Marshall, who denied it on June 19, 1991.

ARGUMENT

1. Petitioner objects to the enforcement of the express terms of a consent decree to which it voluntarily agreed. Petitioner does not contend that the decisions of the Second Circuit or the district court enforcing the consent decree conflict with decisions of this Court or any other court. The question of whether the courts below properly construed the consent decree accordingly does not warrant review by this Court.

2. In any event, the courts below correctly construed the consent decree. The decree by its own terms amends the IBT constitution and prohibits further amendments to the constitution inconsistent with the terms and objectives of the decree unless the union receives approval of the government or the district court. These terms do not, as the IBT contends (Pet. 26, 28), grant the government "control" over the union. Rather, they simply ensure that the rank-and-file election procedures provided for by the decree will be honored. The rank-and-file election is central to the consent decree's goal of wresting the union from the influence of organized crime by returning power to the union membership. The decree

does not in any way diminish the free speech rights of the membership or require the convention delegates to vote in any particular manner. The lower courts' orders upholding the express terms of the decree are thus correct and the petition should be denied.

a. Petitioner argues that the consent decree should be construed to allow the convention delegates to rescind all of the decree's provisions, including the provisions requiring rank-and-file elections. However, the decree clearly provides that its terms are incorporated into the union's constitution and that the union may not amend the constitution in the future to alter the terms of the decree absent prior approval of the United States or the district court. See Pet. App. 63-64, 101-102. The union's contention that it may unilaterally terminate its agreement with the government is not supported by the decree's express terms or by the intent of the parties as presented to the district court at the time the decree was entered.

Consent decrees "should be construed basically as contracts," *United States* v. *ITT Continental Baking Co.*, 420 U.S. 223, 236-237 (1975), and "should be interpreted in a way that gives effect to what the parties have agreed." *SEC* v. *Levine*, 881 F.2d 1165, 1179 (2d Cir. 1989). Consistent with that approach, this decree must be read to amend the union's constitution. In the section specifically addressing changes in the union constitution, the consent decree expressly provides: "The IBT Constitution shall be deemed and hereby is amended to incorporate and conform with all of the terms set forth in this order." Pet. App. 63. Again, before setting out the new rank-and-file election procedures, the decree states: "The IBT Constitution shall be deemed amended, and is hereby amended, to provide for the following new election procedures." Pet. App. 78. That language unambig-

uously demonstrates that the parties intended that the decree would, upon its entry by the district court, become a part of the union constitution.

The union argues that, although the constitution was amended by the decree at the time the decree was entered, the decree should not be read to bar the convention delegates from amending the constitution to nullify any or all of the decree's provisions. Pet. 30-31. That argument ignores the fact that the union agreed to para L.17 of the decree. That paragraph, entitled "Future Practices," expressly states that the parties "intend the provisions set forth [in the decree] to govern future IBT practices." Pet. App. 101. Further, para. L.17 establishes the exclusive mechanism for amending the decree terms incorporated in the union constitution. If "the IBT wishes to make changes, constitutional or otherwise, in those provisions, the IBT shall give prior written notice to the [United States]." *Ibid.* If the United States "objects to the proposed changes as inconsistent with the terms and objectives of [the consent decree], the change shall not occur; provided, however, that the IBT shall then have the right to seek a determination from [the district court] * * * as to whether the proposed change is consistent with the terms and objectives set forth herein." Pet. App. 101-102.

There is nothing unclear about para. L.17. It provides the mechanism to alter or modify the decree provisions incorporated into the union constitution. See *United States* v. *IBT*, 905 F.2d 610, 620 (2d Cir. 1990) (para. L.17 "specifically requires the IBT to refrain from any unilateral changes, 'constitutional or otherwise,' in the broad areas covered by the Consent Decree"). Paragraph L.17 (and the decree itself) would be rendered a nullity if the convention

delegates could simply veto any or all of the decree provisions at will. *Ibid.*

b. In arguing that the convention delegates had power to veto the decree's provisions, the union relies upon the decree provisions mandating a delegate vote upon the decree. Pet. 30. However, as the district court recognized, those provisions do not provide the delegates with veto authority. See Pet. App. 26-32.

At a hearing on March 14, 1989, immediately prior to entry of the consent decree, the district court raised the issue of whether there was any inconsistency between the provisions in the decree amending the union constitution forthwith to incorporate the consent decree's terms and the provisions for a vote by convention delegates upon the decree. C.A. App. 301. Government counsel, speaking for the parties, explained:

> The document makes clear that the constitution of the IBT is deemed amended immediately. In the government's view, that is a permanent amendment and not subject to change, absent the provision we were just talking about [para. L.17, the future practices provision], first coming to the government for change, and if the government says no, then going to this Court or another court of competent jurisdiction.
>
> However, your Honor, there have been legal issues raised in this case. Your Honor saw it when certain locals made motions * * *. Certain local officials or local unions may in the future raise legal challenges about the amendment of an international constitution in a manner that was by court order rather than pursuant to the constitution which calls for ratification at a convention.

> We believe, the government believes, your Honor, there is no question that the amendments can be ordered by this Court pursuant to a consent decree, and that they are automatically in effect. But if down the road there is a challenge by a local official or a local union, ratification at the convention would eliminate any legal issue at all.

C.A. App. 313-314. Counsel for the IBT did not take exception to this explanation or the reason for submitting the decree's provisions to the convention delegates for a vote, *i.e.*, to eliminate any doubts that might later be raised about the decree's legal effect.

Upon hearing this explanation, the district court requested the parties to clarify the document accordingly. C.A. App. 314. The parties modified certain language in the document and reported back to the district court later that day. C.A. App. 390. Government counsel stated, again without contradiction from IBT counsel, that "[e]very provision in the document is deemed automatically amended in the IBT constitution as of the date of entry of the Court order" and that paragraph 9(a) and (b) of the consent decree "explain[s] fully the intent of the parties." C.A. App. 395.

As adopted, paragraph 9 of the decree provides:

> (a) The IBT Constitution shall be deemed and hereby is amended to incorporate and conform with all of the terms set forth in this order.
>
> (b) By no later than the conclusion of the IBT convention to be held in 1991, the IBT shall have formally amended the IBT Constitution to incorporate and conform with all of the terms set forth in this order by presenting said terms to the delegates for a vote. If the IBT has not

> formally so amended the IBT Constitution by that date, the Government retains the right to seek any appropriate action, including enforcement of this order, contempt or reopening this litigation.

Pet. App. 63-64.

The district court was satisfied by the parties' clarification and ordered, with the parties' approval, that the colloquy between the parties and the court set out above be "deemed incorporated by order of this Court" and "be read and considered together with the formal consent order." C.A. App. 397. The district court then approved the consent decree. C.A. App. 397-405.

In light of the above proceedings, the intent of the parties is clear. The consent decree provisions are part of the IBT constitution and cannot be changed without prior approval of the United States or the district court. The delegate vote was included only as a safety net provision, so that in the event a court found that the General Executive Board could not bind the IBT's affiliates or membership, the government would not be left without a remedy.

c. Petitioner asserts that reading the consent decree to preclude the delegates from rescinding the decree's terms would grant the United States government "control of the union * * * in perpetuity." Pet. 27. See also Pet. 26, 28, 32. That is a mischaracterization of the consent decree. The decree's cardinal purpose is to eliminate organized crime's influence over the IBT and return control of the union to its rank-and-file membership. To ensure that result, the decree amends the union constitution, establishing rank-and-file election procedures. To ensure the permanence of its reforms, the decree

provides that constitutional changes in the areas covered by the decree cannot be made without prior approval of the United States or the district court. These provisions of the decree do not "disenfranchise[] the rank-and-file" (Pet. 34); rather, they ensure that the union leadership will be selected by the rank-and-file and will therefore represent the interests of the membership.

d. Petitioner argues that the decree should not be read to limit the free speech rights of the delegates or the membership. Pet. 29-30. The United States agrees. The decree itself guarantees that "nothing herein shall be deemed or interpreted or applied to abridge the Landrum-Griffin free speech right of any IBT officer, delegate or member, including the parties hereto." Pet. App. 83.

Accordingly, the union members are free to speak and vote against the decree and any or all of the decree's terms. Indeed, the June convention has already been held and the union delegates are reported to have exercised those rights with no inhibitions. See Proceedings, 24th Convention, IBT 172-199 (June 24, 1991). The decree's terms were presented to the delegates, who voted to reject them. *Id.* at 199. While the members and delegates retain their free speech rights, amendments to the union constitution that implicate the consent decree may be made only in conformance with para. L.17. Accordingly, the district court correctly held that the delegates' vote on the decree "will now have no legal effect." Pet. App. 40.[3]

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[3] Petitioner contends that the district court's order required the delegates to vote for the decree. Pet. 34-35. When read in context, however, the district court simply said that the union delegates could not rescind the rank-and-file voting pro-

3. Petitioner implies that the decree should not be enforced because the General Executive Board members who signed the agreement did not have the power to bind the union membership to amendments in the union constitution. Pet. 33. That argument is without merit.

The Second Circuit in prior appeals by the IBT and certain of its subordinate entities has firmly established that the General Executive Board did have authority to bind the union's affiliates and membership to the decree's constitutional changes. The IBT constitution allowed the union leaders to amend the constitution as a "result of judicial direction." See *United States* v. *IBT*, 905 F.2d at 622. Thus, the court of appeals held that "as far as the constitutionally delegated powers of the IBT and its officers are concerned, IBT members * * * are bound by the Consent Decree." *United States* v. *IBT*, 931 F.2d 177, 184 (1991).

The court of appeals further explained that "the collective IBT membership was adequately represented in the litigation leading to the Consent Decree" (931 F.2d at 187), and consequently could be bound by that decree. *Id.* at 185-187. The court noted that, had the government pursued the lawsuit to final judgment and prevailed, the relief granted "would have led to the appointment of a trustee to take over the IBT's affairs," thus rendering "questions concerning the method of selecting IBT Convention delegates and IBT officers insignificant." *Id.* at 186. In the face of that possibility, the IBT

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cedures and attempt to elect the executive officers themselves. Pet. App. 50-52. The district court correctly held that such an action would conflict with the consent decree and should be enjoined. Pet. App. 52-54.

was not "powerless to accept a settlement" to avoid a result that "would have abrogated even greater portions of the IBT Constitution." *Ibid.* To the contrary, the decree represented the "collective interest of the IBT membership in both eliminating the influence of organized crime within the union and in doing so at the least cost to internal union processes." *Ibid.* Accordingly, because the union membership was adequately represented when the decree was fashioned, the membership was bound by the changes made to the union constitution.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1991

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 282061 45017